

1 APPEARANCES (continued):

2 MR. MARK L. GOLDSTEIN
3 108 Wilmot Road
4 Deerfield, Illinois 60015
5 appearing for Respondent.
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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	EXMNR
STEPHAN ROLLINS	85	88	99		
MARSHALL SHIFRIN	103	106	194 207	204 207	191 205
LYNN MILLER	213	217	264	280 289	254 283

E X H I B I T S

COMPLAINANT'S FOR IDENTIFICATION IN EVIDENCE.
(AMERICANA TOWERS)

Nos. 3.0	85	88
3.1	85	88
3.2	85	88
1.0 thru 1.6	103	106
2.1 thru 2.6	103	106

COMPLAINANT'S
(AMERICANA TOWERS
CROSS)

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2	RESPONDENT'S	FOR IDENTIFICATION	IN EVIDENCE.
3	CROSS (COM ED)		
4	No. 1	169	
5			
6	RESPONDENT (COM ED)	FOR IDENTIFICATION	IN EVIDENCE
7	Nos. 1.0	212	212
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8	2.1	213	216
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1 JUDGE GILBERT: Okay. Let's go. Pursuant to
2 the authority of the Illinois Commerce Commission, I
3 call Docket No. 05-0415, Americana Towers
4 Condominium Association vs. Commonwealth Edison
5 Company.

6 If I could have appearances for the
7 record, please, beginning with the complainant.

8 MR. MUNSON: On behalf of Americana Towers
9 Condominium Association, Michael Munson; Law Firm of
10 Michael A. Munson, M-u-n-s-o-n, 233 North Wacker
11 Drive, Suite 1800, Chicago, Illinois, 60606. Also
12 in the courtroom is Mr. Marshall Shifrin,
13 Mr. Stephan Rollins, and Mr. John Armetta
14 (phonetic).

15 MR. GOLDSTEIN: On behalf of Commonwealth Edison
16 Company, Mark L. Goldstein, 108 Wilmot Road, Suite
17 330, Deerfield, Illinois, 60615. My telephone
18 number is 847-580-5480. Also, I have with me John
19 Parise, P-a-r-i-s-e, of Commonwealth Edison. Also,
20 in the room is David Gerrity (phonetic) from Com Ed.

21 JUDGE GILBERT: Okay. Now Com Ed does have three
22 witnesses who have prefiled testimony?

1 MR. GOLDSTEIN: That's correct, Judge.

2 JUDGE GILBERT: Are the other two persons

3 available today?

4 MR. GOLDSTEIN: Yes, they are, Judge. Mr. Sherer

5 (phonetic) is on his way to the hearing room. He

6 had a meeting this morning and could not get out of

7 it. Ms. Miller was already here and she has other

8 engagements that she has to take care, but she'll be

9 back.

10 JUDGE GILBERT: Okay. I could tell who

11 Mr. Rollins must be just by eliminating all the

12 people I do know. Has Mr. Rollins filed testimony

13 -- prefiled testimony on behalf of Mr. Rollins?

14 MR. MUNSON: Yes.

15 JUDGE GILBERT: I haven't seen that. I saw his

16 name mentioned, but I don't have any of the

17 testimony.

18 MR. MUNSON: It should be on e-docket, but I do

19 have copies. There's two exhibits and prefiled

20 testimony. Do you have copies marked?

21 MR. GOLDSTEIN: Oh, I have Mr. Rollins'

22 testimony, yes.

1 JUDGE GILBERT: Mr. Goldstein, do you anticipate
2 cross-examination for Mr. Rollins?

3 MR. GOLDSTEIN: Well, Judge, as you are aware,
4 there are at least two preliminary matters prior to
5 getting into the testimony and cross-examination.

6 JUDGE GILBERT: Right.

7 MR. GOLDSTEIN: The one I'm interested in is our
8 motion to strike the rebuttal testimony.

9 JUDGE GILBERT: Right. Just let me look ahead for
10 a moment. If his testimony is presented today, do
11 you intend to do cross-examination of Mr. Rollins?

12 MR. GOLDSTEIN: If the motion fails, yes.

13 JUDGE GILBERT: And the reason I ask that is
14 because, in all event, I'm assuming Mr. Shifrin is
15 the witness towards whom you'll direct most of your
16 questions.

17 MR. GOLDSTEIN: Correct.

18 JUDGE GILBERT: And no matter what happens with
19 respect to your motion, he has direct testimony,
20 which is not the subject of your motion, and he'll
21 be cross-examined today, and I thought if
22 Mr. Rollins would have a very short time here,

1 perhaps we would take him first so he would go, but
2 we'll cross that bridge after we discuss the
3 motions. All right.

4 MR. MUNSON: Judge, may I?

5 JUDGE GILBERT: May you what?

6 MR. MUNSON: I have e-docket filing section
7 tracking number for Mr. Rollins' testimony.

8 JUDGE GILBERT: All right. Well, I think the
9 only point that I need to address, first of all, was
10 with respect to that is the time of filing because
11 that's the entire substance of the motion to strike
12 both his testimony and Shifrin's rebuttal testimony.

13 Do you know the time of filing,
14 Mr. Munson?

15 MR. MUNSON: The time of filing was approximately
16 6:20 p.m. on November 8th 2006.

17 JUDGE GILBERT: Mr. Goldberg, in your motion I do
18 not see any assertion that the filing at a time
19 after the official close of business has prejudiced
20 Com Ed's preparation for the case.

21 Are you assuming that it has?

22 MR. GOLDSTEIN: Well, I would point out, Judge,

1 that when we met at the emergency hearing on
2 November 2nd, the parties agreed that Mr. Munson
3 would be allowed to file rebuttal testimony on
4 Wednesday, the 8th. My assertion is that if he did
5 not do it he violated the rules and I guess we're
6 prejudiced by it.

7 JUDGE GILBERT: In what way?

8 MR. GOLDSTEIN: Well, we already gave them two
9 days additional time to file the rebuttal testimony.
10 It must be clear to your Honor that, particularly
11 with respect to Mr. Shifrin's testimony and the
12 detail that is provided there that most, if not all,
13 of the testimony was probably available at the time
14 of the emergency hearing. We have lost, in essence,
15 three days' preparation time for the hearing with
16 respect to Mr. Shifrin's rebuttal testimony.

17 The only other point I would like to
18 make with respect to Mr. Rollins' testimony is that
19 in reviewing that testimony, I did not see where he
20 specifically said it was rebuttal testimony. It's
21 not termed that from what I could see in the filing.
22 It just says testimony of Stephan Rollins, and he

1 does not point out what he's rebutting. Other than
2 that, I guess I have no problems.

3 JUDGE GILBERT: All right. Well, it seems to me
4 that point two would constitute a separate motion.
5 It's not something in the written motion that you
6 filed.

7 MR. GOLDSTEIN: That's correct.

8 JUDGE GILBERT: All right. With regard to having
9 lost three days, of course, you agreed to the two
10 additional days during our hearings and you did so
11 voluntarily, so you didn't lose those in my
12 judgment.

13 As to losing anything further had he
14 filed right before 5 o'clock, as many do, and
15 certainly your own client has done many times in
16 cases, you may or may not have worked after work and
17 before the morning of the next business day. I
18 don't know that, but I'm going to give you the
19 benefit of doubt on that and assume that you might
20 have taken some action.

21 The remedy for his filing an
22 hour-and-20-minutes after filing time does not

1 necessarily strike his testimony but to accommodate
2 any prejudice that you might have suffered, if you
3 like, I'll have Mr. Shifrin come back on another
4 date and Mr. Rollins for cross-examination of their
5 rebuttal testimony.

6 MR. GOLDSTEIN: I think given the time problems
7 that everybody has, Judge, we would be better off
8 going forward today.

9 JUDGE GILBERT: All right. I think that's what
10 we'll do, and my ruling on the motion is that I'm
11 not striking his testimony. I am offering some
12 amount of time to accommodate any prejudice Com Ed
13 may have experienced, and my understanding is that
14 you're willing to waive that at this point in the
15 interest of time.

16 All right. Now with respect to the
17 complainant's motion to compel, Mr. Goldstein, you
18 do not file anything in writing and I didn't require
19 you to file something. Is there anything you want
20 to say in response now?

21 MR. GOLDSTEIN: I think the first thing I like to
22 respond to is the assertion made by Mr. Munson that

1 there was somehow some colloquy between us with
2 respect to resolving any differences related to the
3 first set of discovery that Mr. Munson gave us. It
4 seems to me that while at the emergency hearing on
5 November 2nd I did make some comments with respect
6 to various data requests. There was, indeed, no
7 colloquy between counsel and me with respect to
8 resolving any differences that there may have been
9 in the responses made, and as, your Honor, will
10 recall, Mr. Munson left immediately after we
11 finished the emergency hearing and I have not spoken
12 to him since, so that assertion by him in his motion
13 seems to be really not what the actual fact of the
14 situation is.

15 With respect to the various data
16 requests, it just seems to me that the company has
17 responded to them to the best of our ability to do
18 so.

19 The objections that were raised in
20 particular seem to be, as far as I'm concerned,
21 right on with respect to what is sought to be
22 produced, and, you know, we are going to start going

1 through each one of them. I guess we could do that.

2 I believe we answered No. 3, Request

3 No. 3, the first set of data requests; Request

4 No. 4, and I believe this is -- one of them had to

5 do with how many complaints Com Ed received each

6 year since 1991 for alleged meter malfunctions.

7 Obviously, you know, this is not relevant to this

8 particular proceeding, and for us to even attempt to

9 answer this question would be a total impossibility.

10 What Mr. Munson is seeking is 15 years' worth of

11 information when he knows very well that that kind

12 of information isn't kept in the form he's

13 requesting and it never -- it is not available in

14 any form.

15 With respect to Request No. 5, that --

16 we have answered that question. With Request

17 No. 6, we have answered that question, and with

18 Request No. 7, he's asking how many customers

19 complained at the ICC, either formally or

20 informally. That's another question. That's an

21 impossibility to answer for the last 15 years,

22 Judge, and it just seems to me that -- and when

1 combined to Request No. 8, how many refunds have
2 been provided, and so forth, these are questions
3 that just seem to me to be harassing-type questions
4 and they have been appropriately responded to by the
5 company.

6 Request No. 9 I think are responses
7 perfectly appropriate. It is -- the question talks
8 about what internal control systems and processes
9 insuring that billing disputes did not occur.
10 that's a question like why did you hit your child
11 when there's no proof of any child being hit. It
12 seems to me that that's just, as we responded, vague
13 and ambiguous and it's not really capable of being
14 answered.

15 Request No. 10 assumes that there was a
16 working Microsoft Excel spreadsheet detailing
17 certain calculations. As it's clear from the
18 testimony presented by Mr. Gerrity, there was no
19 such document made up by Com Ed in preparation of
20 his rebuttal testimony and I do not believe we
21 should be required to attempt to replicate what
22 Mr. Shifrin has already provided.

1 I guess that pretty much answers
2 generally and specifically most of the motion to
3 compel.

4 JUDGE GILBERT: Do you want to respond?

5 MR. MUNSON: Briefly. Just the assertion on the
6 -- that's right, we did not have a specific
7 conversation in open court on the record. I believe
8 it was on the record counsel for Com Ed stated that
9 he would be complying with the data requests. They
10 weren't in the time of status hearing made
11 assertions to such data requests. Data requests
12 came in the following day. We can go through the
13 questions.

14 No. 3 was simply not answered. There is
15 a business process for estimating bills that was not
16 provided either in the tariff or in general business
17 practices. We are entitled to know what that is.

18 We didn't ask No. 6 to compel. I do -- I
19 can understand that -- the amount of complaints at
20 the ICC. That information may be readily available.
21 If it's not, it's not. They ought to be able to add
22 them up on a year-by-year basis.

1 The main one that I'll comment on is
2 Request No. 10. Mr. Gerrity created a spreadsheet,
3 Exhibit 1.1, to his testimony. That's sort of the
4 information that I was looking for in whether any
5 other spreadsheets were created using Americana's
6 bills that had been provided to Com Ed on numerous
7 occasions. If Com Ed does not dispute Mr. Shifrin's.

8 Calculations and his spreadsheets offered
9 in Exhibit 1.1 I believe of his direct testimony,
10 then I really don't have a problem.

11 MR. GOLDSTEIN: Well --

12 JUDGE GILBERT: You don't need to respond. I
13 think the standard objection Com Ed interposed was
14 that the questions were vague and ambiguous, and I
15 might have chosen some different terms or I might
16 have added some other terms, and vague and ambiguous
17 I suppose themselves -- the meaning of those terms I
18 suppose is, in turn, vague and ambiguous. I would
19 have added others which would have been overbroad
20 and burdensome.

21 Most of these questions, in my judgment,
22 are overbroad and burdensome and I'm trying to think

1 of what you would hope to accomplish with these.

2 Com Ed has already conceded that they have
3 made billing errors with respect to your particular
4 client. Now how knowing that there have been
5 complaints filed against Com Ed or the total number
6 of complaints filed against Com Ed over a 15-year
7 period would help your case is a mystery to me, and
8 because I do find those questions overbroad and
9 burdensome, I would deny the motion with respect to
10 those, and I will identify those for you. That
11 would be 4(b), all of 7, all of 8, all of 9, all of
12 10.

13 With respect to 5, I agree with Com Ed
14 that they did a satisfactory job of responding to
15 that question. If they tell you they don't have
16 documents, then they don't have documents. If you
17 don't believe them, there's a different kind of
18 motion you have to file, not a motion to compel, and
19 the same goes for No. 10.

20 I'm not terribly happy with your
21 reference to Mr. Gerrity's Exhibit 1.1, which is a
22 presentation of load factors. It has nothing to do

1 with adjustment amounts. It doesn't purport to
2 present adjustment amounts and to cite it as
3 something they're doing or something similar to
4 doing that is simply wrong in a case they told you
5 they didn't prepare one, and that's it.

6 Question No. 3 I think was satisfactorily
7 answered. The only one I have doubts about is 4(a),
8 and I'll explain why I have doubts about it. You
9 want every complaint regarding alleged meter
10 malfunctions, which has the advantage of your other
11 questions of being about a specific subject, then
12 you ask, what I consider is a reasonable question,
13 as a follow-up, which is Part A, how many of these
14 were determined to be actual meter malfunctions.
15 The raw number of complaints is useless in the case.

16 Complaints are about a lot of things.
17 Complaints aren't necessarily sustained. There can
18 be a lot of reasons for complaints that have nothing
19 to do with the issue in this case.

20 I'm not sure about 4(a). I'm not going
21 to rule on 4(a) at this moment. I want to see how
22 the case unfolds. All the rest of them are denied

1 and you guys can go take exceptions to the adverse
2 content in my rulings if you like, although you have
3 formal leave to do so.

4 Anything else before we move onto our
5 first witness?

6 MR. MUNSON: Oh, Judge, may I make a motion in
7 limine to exclude witnesses?

8 JUDGE GILBERT: Yes, but let me point something
9 out first of all. You have changed the exhibit
10 number on Mr. Shifrin's rebuttal because you have it
11 10 and it should be 20.

12 MR. MUNSON: The first page is 10. What I did --
13 if you look on Page 2, it says 20.

14 JUDGE GILBERT: Do you know if the clerk took it
15 in as 20 or 10?

16 MR. MUNSON: I do not. When I filed
17 Mr. Shifrin's testimony first, I neglected to print
18 out a file section tracker file immediately,
19 therefore, after filed Mr. Rollins, which I did
20 printout, so I do not know. I believe I filed it as
21 Exhibit 2.0 --

22 JUDGE GILBERT: Okay.

1 MR. MUNSON: -- and that is attachment as 2.1
2 through 2.6.

3 JUDGE GILBERT: If I could make the record clear
4 here, I'll note obviously that that should be
5 entitled 2.0 and we'll consider that amended on the
6 front page. Similar problem I note with
7 Mr. Rollins. It's correctly identified on the first
8 page as 3.0, but then throughout it's referred to as
9 1.0.

10 Now the other issues initially
11 Mr. Goldstein raised about whether this is rebuttal
12 testimony, I don't think it needs to be captioned
13 rebuttal testimony to be rebuttal testimony. That
14 leaves open, however, the question whether it is, in
15 fact, rebutting something that was said by Com Ed's
16 direct witness or something said in Com Ed's direct
17 case, so while I don't care how it's captioned,
18 Mr. Goldstein, as things go along, I'm not
19 precluding you from renewing your motion if you feel
20 a particular content is not responsive to direct
21 testimony.

22 MR. GOLDSTEIN: Let me make one further point,

1 Judge. I guess I don't have any problem with
2 whether it's captioned rebuttal or not. I sort of
3 agree what you just said. I guess my real point is
4 that Mr. Rollins' testimony could easily have been
5 provided with the initial filing made by Americana
6 Towers when Mr. Shifrin filed his direct testimony.
7 It seems to me Mr. Rollins could have filed direct
8 testimony that he presented in the middle of last
9 week.

10 JUDGE GILBERT: Well, not having read it, I'm not
11 in a position to respond to that. If you want to
12 point something out as we move along, I'll certainly
13 consider it. I'll say it differently. If I come to
14 believe somewhere along the lines this was something
15 that was sandbagged and to have an opportunity to
16 respond with testimony, I can make that ruling then,
17 but I can't make it now. All right now --

18 MR. GOLDSTEIN: Do you want to present Mr. -- is
19 Mr. Rollins going to go first?

20 JUDGE GILBERT: He has a motion. Go ahead.

21 MR. MUNSON: I'm sorry. What was it?

22 JUDGE GILBERT: You are up. You have a motion?

1 You want to make a motion?

2 MR. MUNSON: Oh, motion in limine to exclude
3 witnesses.

4 JUDGE GILBERT: What witnesses do you want to
5 exclude and when?

6 MR. MUNSON: Well, I have similar questions to
7 the Com Ed witnesses. Now I understand Ms. Miller's
8 probably traveling back and forth from Philly to
9 Chicago during the time when I'm cross-examining.

10 MR. GOLDSTEIN: Ms. Miller is here. She's
11 working out of the Com Ed office as we speak right
12 now. She'll be available for the presentation of
13 her rebuttal testimony, as well as
14 cross-examination, today. She is in town. She is
15 here. We did introduce her to Mr. Munson.

16 MR. MUNSON: Yes.

17 MR. GOLDSTEIN: Mr. Sherer, as I explained, is on
18 his way here.

19 MR. MUNSON: I'm not trying to exclude him from
20 the proceeding just -- from just literally of five
21 minutes particular questions that I'm asking --
22 likely asking each witness, and I don't want to hear

1 their responses to my questions.

2 For example, if I ask Mr. Gerrity, I
3 would rather not -- I would rather them be clear and
4 answered without having heard the question before
5 and the response thereto.

6 JUDGE GILBERT: So you are talking about
7 excluding one Com Ed witness while another Com Ed
8 witness testifies?

9 MR. MUNSON: That's correct.

10 JUDGE GILBERT: Right now only Mr. Gerrity's in
11 the room and right now we have to present your
12 direct case.

13 MR. MUNSON: Yes.

14 JUDGE GILBERT: So if you want to make that
15 motion again later when there's other Com Ed
16 witnesses present, we can do it. Let's not address
17 it now.

18 MR. MUNSON: Okay.

19 JUDGE GILBERT: Are you ready to put on either
20 Mr. Shifrin or Mr. Rollins? Both gentlemen are
21 ready I assume.

22 MR. MUNSON: Yes.

1 JUDGE GILBERT: Go off the record for a moment.
2 (Off the record.)
3 (Witness sworn.)
4 We're on.
5 MR. MUNSON: Thank you, Judge, Counsel.
6 (Complainant's (Americana
7 Towers) Exhibit Nos. 3.0,
8 3.1 & 3.2 were marked for
9 identification.)
10 STEPHAN ROLLINS,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY
15 MR. MUNSON:
16 Q. Mr. Rollins, would you please state your
17 name, spell your last name, and provide your
18 business address for the record.
19 A. It's Stephan D. Rollins, R-o-l-l-i-n-s.
20 Q. And what is your place of business?
21 A. 1636 North Wells, Americana Towers.
22 Q. That's in Chicago?

1 A. Chicago, yes.

2 Q. And on whose behalf are you testifying in
3 this proceeding?

4 A. Americana Towers.

5 Q. And you have in front of you what's been
6 marked by Americana Towers Association Exhibit 3.0
7 along with Exhibits 3.1 and 3.2; is that correct?

8 A. Yes.

9 Q. And while the first page of your testimony
10 provides 3.0, the second through fourth page
11 provides Exhibit 1.0. At this time I would like to
12 change that to -- so it's consistent 3.0.

13 A. Yes.

14 Q. And is it correct that 3.0 contains four
15 pages and Exhibit 3.1 contains two pages, and 3.2
16 contains six pages?

17 A. Yes.

18 Q. Were this testimony and exhibits prepared by
19 you or under your direction and supervision?

20 A. Yes.

21 Q. If I were to ask you the same questions as
22 they are set forth in Americana Towers Condo

1 Association Exhibit 3.0, would your testimony be the
2 same?

3 A. Yes.

4 MR. MUNSON: At this time I move for admission
5 into the record of Americana Exhibit 3.0 and
6 Exhibits 3.1 and 3.2, and tender Mr. Rollins for
7 cross-examination.

8 JUDGE GILBERT: All right. Just so I'm clear,
9 3.1 is a two-page memo dated January 5, 1993; is
10 that correct --

11 MR. MUNSON: That's correct.

12 JUDGE GILBERT: -- and 3.2 is then a partial
13 billing from Gurtz, G-u-r-t-z, Electric Company,
14 correct?

15 MR. MUNSON: Yes, invoices and a handwritten
16 memo.

17 JUDGE GILBERT: Okay.

18 (Whereupon, Mr. Shifrin
19 entered the room.)

20 MR. GOLDSTEIN: This is Mr. Sherer.

21 JUDGE GILBERT: All right. Objection at this
22 point to admission?

1 MR. GOLDSTEIN: No objection, Judge.

2 JUDGE GILBERT: All right. Americana 3.0, 3.1,
3 3.2 are admitted subject to cross examination by
4 Com Ed.

5 (Whereupon, Complainant's
6 (Americana Towers)
7 Exhibit Nos. 3.0, 3.1,
8 and 3.2 were received in
9 evidence.)

10 MR. GOLDSTEIN: Thank you, Judge.

11 Mr. Hello, Mr. Rollins.

12 CROSS EXAMINATION

13 BY

14 MR. GOLDSTEIN:

15 Q. Hello, Mr. Rollins. Let me first ask you
16 about what your duties are as the chief engineer at
17 the Americana Towers Condominiums.

18 A. We are responsible for day-to-day operations
19 of six janitors, maintenancemen, assistant engineer,
20 and myself, and all the mechanicals.

21 Q. And do you have any specific duties as they
22 relate to Com Ed's electric service provided to the

1 building?

2 A. No.

3 Q. Are you an electrician?

4 A. No.

5 Q. On Page 2 of your testimony at Lines 42 and
6 43 you state that no significant load has been added
7 to the building, and you go on to describe that no
8 significant load was added in the 1990s.

9 What do you mean by the term "significant
10 load?"

11 A. Americana Towers advised me that there's
12 like a huge, huge load that was added on, and at a
13 time in the 90s there was no load that huge, no huge
14 load like we have a chiller in the building.

15 Q. Well, can you describe in amps of what you
16 would believe to be a huge load?

17 A. I would think something point a hundred amps
18 or more would be a huge load.

19 Q. And was there any load added to the building
20 in the 90s, electric load --

21 A. Not to my knowledge.

22 Q. -- we are talking about?

1 Do you know when the last time any
2 electrician did any work at Americana Towers?

3 A. We have electricians in and out a lot of
4 times but nothing really -- in the like ballroom
5 they may run some lights in our commercial space,
6 repair some motors up in the boiler room.

7 Q. Okay. Now with respect -- well, let me
8 strike that. Do you do any electric work in the
9 condominium building?

10 A. No.

11 Q. Now attached to your testimony, specifically
12 looking at what has been marked as 3.2, there are
13 two invoices from Gurtz and some handwritten notes.

14 Are the handwritten notes that accompany
15 the invoices notes provided by Gurtz Electric?

16 A. I believe so, yes.

17 Q. Prior to your preparation of your testimony
18 for this proceeding, Mr. Rollins, did you review --
19 at the time these documents were prepared, did you
20 review these documents?

21 A. That are attached, yes.

22 Q. Let me also show you something that was --

1 are you familiar with a data request made by the
2 Commonwealth Edison to Americana Towers, a Data
3 Request No. 9?

4 A. No.

5 Q. That data request asks for contract or
6 contract invoices for all electrical -- all electric
7 work done in complainant's premises, excluding but
8 not limited to, electrical equipment, expansions,
9 revisions, upgrades, or any other modifications,
10 removals, between 1991 and 1999.

11 Did anyone at Americana Towers or
12 counsel for Americana Towers ask you to respond to
13 that data request?

14 A. No, sir.

15 Q. Other than current electricity going out to
16 Americana Towers as a result of the fire, were there
17 any other electricians working at Americana Towers
18 between January and August of 1993?

19 A. I don't recall. Gurtz is the only one that
20 that worked on the large equipment, but, I mean, we
21 could have had a small contractor do something. I
22 don't recall.

1 Q. Let me show you, Mr. Rollins, what has been
2 provided subsequent to our -- subsequently in
3 response to our Data Request No. 9, and I'm
4 referring specifically -- I'm referring specifically
5 to a letter from Americana Towers signed by
6 Mr. Armetta to Americana Towers of the Rockwood
7 Company dated July 12, 1993. Do you see that
8 letter?

9 A. Yes.

10 Q. Why don't you take a moment to take a look
11 at it.

12 A. (Witness reviewed document.) Okay.

13 Q. This letter was sent to Rockwood Company,
14 was it not, during the time that electric work was
15 being done at Americana Towers; is that right?

16 A. I believe so. I believe Gurtz was still
17 working on some permit.

18 Q. It also suggest in the letter -- and I'll
19 read it, it says "Gurtz Electric Invoice No. 24148
20 represents only part of the work needed to replace
21 the temporary wiring in our main electrical
22 switching service. The balance of this work is out

1 for bid."

2 Do you know who successfully bid for
3 the rest of the electric work?

4 A. No, sir.

5 Q. Does that mean you don't recall?

6 A. I know I probably was not made privy to
7 that. I only oversee the work as it's being done.

8 Q. Okay. Now judging by your description of
9 the amount of damage related to the fire, and I'm
10 looking at Page 3, lines approximately 57 to 62 of
11 your testimony, Mr. Rollins, I am correct that you
12 believe there was a significant amount of damage
13 done as a result of the fire?

14 A. Yes.

15 Q. Correct?

16 A. Yes, sir.

17 Q. And it took a lot of work obviously with the
18 amount of dollars spent in various invoices to
19 correct the problems that the fire caused, correct?

20 A. Yes.

21 Q. And could you tell us how long the work
22 actually went on in order to correct all of those

1 problems that the fire occurred?

2 A. For that's date?

3 Q. As result of the fire, how long did it take
4 for whatever people provided services for them to
5 complete those services and correct the problems?

6 A. I think the repairs were not completely done
7 for approximately seven to nine months I believe.

8 Q. And that would have taken it to September,
9 October of 1993?

10 A. I believe so.

11 Q. Do you know when the electrical work was
12 completed at the building?

13 A. Not offhand, I don't.

14 Q. You have been made privy to all the invoices
15 for the contractors that were working at the
16 building after the fire?

17 A. I'm not sure. I believe so. Usually I sign
18 all the invoices just so that I'm acknowledging that
19 I'm aware of them.

20 Q. So what you provided was only the Gurtz
21 Electric invoices; is that right?

22 A. Correct.

1 Q. Were those all of the Gurtz Electric
2 invoices?

3 A. I believe so.

4 Q. Was there any work done, to your knowledge,
5 by an electrician to correct a
6 short-circuit-to-ground condition at the building?

7 MR. MUNSON: Objection; foundation.

8 THE WITNESS: I don't know.

9 MR. MUNSON: Hold on.

10 JUDGE GILBERT: Well, he answered.

11 MR. GOLDSTEIN: He's answered the question,
12 Judge.

13 JUDGE GILBERT: Yes, he answered the question.

14 MR. GOLDSTEIN: Q. Were the electric panels
15 serving the building damaged in the fire?

16 A. Yes.

17 Q. Were those panels serving the building
18 temped (sic) over to the main building panels, do
19 you know?

20 A. No, I don't. I know they installed a lot of
21 jumpers first and temporary repairs.

22 Q. But do you know specifically what Gurtz did?

1 A. No.

2 Q. Do you personally review the electric bills
3 that come for the building?

4 A. No.

5 Q. Who does?

6 A. Management, I believe.

7 Q. Would that be Mr. Armetta?

8 A. Yes.

9 Q. John Armetta for the record?

10 A. I'm sorry?

11 Q. Does Mr. Armetta review the electric usage
12 with you for the building?

13 A. No, sir.

14 Q. Does he ever ask you, for example, about
15 times when the bill is higher than it normally is?

16 A. Over the past I've been asked several times
17 if we are doing anything different, but, I mean, I
18 just don't remember when.

19 Q. Could it have been in the 1990s?

20 A. Possible.

21 Q. Were you aware that the electric usage was
22 higher in the first nine months of 1993 than usual?

1 A. No.

2 Q. And so Mr. Armetta never told you those
3 first nine months of 1993 electric usage was higher
4 than usual?

5 A. No, sir.

6 Q. Were you aware that Com Ed worked to resolve
7 a billing dispute for the bills that covered the
8 summer billing period of 1993?

9 A. No, sir.

10 Q. If electric usage was higher than normal for
11 a particular period of time, would you expect
12 Mr. Armetta or someone in management at Americana
13 Towers to ask you why that would occur?

14 MR. MUNSON: Objection; calls for speculation.

15 JUDGE GILBERT: I'll sustain it.

16 MR. GOLDSTEIN: Q. But you're responsible for
17 maintaining the building, are you not?

18 A. Yes, I am.

19 Q. And what do you mean -- would you be
20 consulted when electric usages are already high?
21 You have already said that has been asked of you.

22 MR. MUNSON: Objection to the form of the

1 question. Can you just restate.

2 MR. GOLDSTEIN: I think I have stated its
3 probable use.

4 JUDGEs GILBERT: Yes, I think the problem is the
5 question came a bit compound. Let's repeat it,
6 Counsel.

7 MR. GOLDSTEIN: I will break it up if you wish.

8 JUDGE GILBERT: Okay.

9 MR. GOLDSTEIN: Q. You previously testified
10 under my examination, Mr. Rollins, there were times
11 when you were consulted about the high electric
12 bills, correct?

13 A. Certain times, and I can't actually remember
14 if it was John Armetta, or it could have been
15 Lou Lux (sic) who used to be our -- a supervisor.
16 Every once in awhile I would be asked about the
17 electric consumption.

18 Q. And you don't -- you did not recall specific
19 times when that request was --

20 A. No, sir.

21 Q. -- or requests were made of you, correct?

22 A. No, sir.

1 Q. Do you think it would be appropriate for --
2 what kind of responses would you make when those
3 requests were made of you?

4 A. If I knew of something, if I was asked why
5 electric consumption would jump in the spring, I
6 would tell them it's because we start up the air
7 conditioner.

8 Q. In a previous question I asked you what you
9 thought a high load would be and you said a hundred
10 watts; is that right?

11 A. No, a hundred amps.

12 Q. I'm sorry. A hundred amps. Do you know
13 what that equates to in usage per month?

14 A. No, I don't.

15 MR. GOLDSTEIN: I have nothing else.

16 JUDGE GILBERT: Okay. Do you have redirect,
17 Mr. Munson?

18 MR. MUNSON: Briefly.

19 REDIRECT EXAMINATION

20 BY

21 MR. MUNSON:

22 Q. You recall a series of questions where you

1 were asked as a result of the fire how long did it
2 take to repair the building?

3 A. Yes.

4 Q. And you stated approximately until September
5 of October of 1993; is that correct?

6 A. To my knowledge, yes.

7 Q. And just to be clear, during those
8 approximately nine or ten months, was any load that
9 you are aware of added to the building to make those
10 repairs?

11 A. No.

12 MR. MUNSON: Nothing further.

13 JUDGE GILBERT: Recross going to redirect.

14 MR. GOLDSTEIN: I have no other questions of
15 Mr. Rollins.

16 JUDGE GILBERT: All right. Mr. Rollins, that's
17 it. Thank you.

18 THE WITNESS: Thank you.

19 JUDGE GILBERT: Mr. Munson, perhaps I should
20 address this through you to Mr. Armetta as well. If
21 for some reason, which I can't really foresee by
22 this moment, it does occasionally happen, we would

1 have need to recall Mr. Rollins, would they be
2 available throughout the day by cell phone or some
3 other means?

4 MR. MUNSON: That's a yes.

5 MR. ARMETTA: Yes.

6 MR. MUNSON: And, yes. The facility's actually
7 not that far away, so it's reasonable.

8 JUDGE GILBERT: Okay. I doubt that's going to
9 occur. I just want to find out if you were
10 available. Thank you.

11 MR. MUNSON: If I could have one second, Judge.

12 JUDGE GILBERT: Sure.

13 MR. GOLDSTEIN: We'll take a short recess while
14 we shift things around.

15 JUDGE GILBERT: Sure.

16 MR. GOLDSTEIN: Five minutes.

17 (Off the record.)

18

19 JUDGE GILBERT: We're back on the record.

20 Mr. Shifrin has taken a seat to be
21 direct-examined and cross-examined. If you could
22 look at Page 26 of the rebuttal testimony, which is

1 Complainant's 2.0, and if you have that, it seems to
2 me that the material begins on Line 571 on Page 26
3 and carries over to Line 594 on Page 27 is a
4 duplicate of, yes, Line 479 through 9-5-03.

5 MR. MUNSON: So important we have to say it
6 twice.

7 JUDGE GILBERT: There you go. Did I miss some
8 fine nuance or is that a duplication?

9 MR. MUNSON: So not fine editing I think what
10 happened.

11 MR. GOLDSTEIN: I didn't see that either, Judge.
12 Thank you.

13 JUDGE GILBERT: I'm going to guess you guys were
14 adjusting the questions and answers and instead of
15 deleting it copied it.

16 MR. GOLDSTEIN: I have.

17 JUDGE GILBERT: I just wanted to confirm that was
18 a duplication. I don't know what we actually need
19 to do from a formal standpoint. Let's do this.
20 Just to be clear, Line 571 to 594 of Complainant's
21 Exhibit 2.0 are excluded, and excluded simply
22 because they're duplications of what appears earlier

1 in the testimony.

2 Okay. So with that, Mr. Shifrin, let me
3 swear you in.

4 (Whereupon, Complainant's
5 (Americana Towers)
6 Exhibit Nos. 1.0, 2.0,
7 1.1 thru 1.6 & 2.1 thru
8 2.6 were marked for
9 identification.)
10 (Witness sworn.)

11 Thank you, sir.

12 Mr. Munson, you are up.

13 MR. MUNSON: Thank you, Judge.

14 MARSHALL M. SHIFRIN,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY

19 MR. MUNSON:

20 Q. Mr. Shifrin, would you please state your
21 name, spelling your last name, and provide your
22 business address for the record.

1 A. My name is Marshall M. Shifrin,
2 S-h-i-f-r-i-n, 3049 West Dorian Drive, Northbrook,
3 Illinois.

4 Q. Now you have in front of you what's been
5 marked for purposes of identification as Americana
6 Towers Condominium Association Exhibits 1.0 and 2.0,
7 along with Exhibits 1.1 through 1.6 and 2.1 through
8 2.6; is that correct?

9 A. Yes, I assume.

10 Q. I ask you if this is your prefiled testimony
11 an exhibits submitted in this providing?

12 A. Oh, yes.

13 Q. Is it correct that Exhibit 1.0 contains 122
14 pages, Exhibit 1.1 contains six pages of
15 spreadsheets, Exhibit 1.2 contains one page, 1.3
16 contains one page, 1.4 contains six pages, and 1.5
17 contains one page, and Exhibit 1.6 contains six
18 pages; is that correct?

19 A. Yes.

20 Q. Am I also correct that 2.0 contains 30
21 pages, Exhibit 2.1 contains one page, 2.2 contains
22 two pages, 2.3 contains one page, 2.4 contains one

1 page, 2.5 contains one page, and Exhibit 2.6

2 contains one page?

3 A. This says Exhibit 1.0 and this says Exhibit

4 1.0.

5 Q. I believe we are going to get to that.

6 A. Oh, okay. Then the answer is yes.

7 Q. Now were these testimonies and exhibits

8 prepared by you or under your direction and

9 supervision?

10 A. Yes.

11 Q. Now with regard to the issue of your

12 rebuttal testimony being marked on the first page as

13 1.1, would you at this time like to change that to

14 2.0 to conform with the subsequent pages of that

15 rebuttal testimony?

16 A. Yes.

17 Q. If I were to ask you the same questions that

18 are set forth in Americana Towers Condominium

19 Association Exhibits 1.0 through 1.6, 2.1 to 2.6,

20 would your testimony be the same?

21 A. Yes.

22 MR. MUNSON: At this time, Judge, I move for

1 admission into the record of Americana Exhibits 1.0
2 through 1.6 and 2.0 through 2.6 and tender
3 Mr. Shifrin for cross.

4 JUDGE GILBERT: Is there any objection?

5 MR. GOLDSTEIN: No objection.

6 JUDGE GILBERT: All right. Americana 1.0, 1.1,
7 through 1.6, 2.0 and 2.1 2 through 2.6 are all
8 admitted.

9 (Whereupon, Complainant's
10 (Americana Towers)
11 Exhibit Nos. 1.0, 1.1
12 thru 1.6, 2.0, 2.1 thru
13 2.6 were received in
14 evidence.)

15 Mr. Goldstein, it's your witness.

16 MR. GOLDSTEIN: Thank you, Judge.

17 CROSS EXAMINATION

18 BY

19 MR. GOLDSTEIN:

20 Q. Mr. Shifrin, first of all, could you, based
21 upon your educational background, tell me what the
22 difference is between you with a degree in

1 mechanical engineering and someone with a degree in
2 electrical engineering, what the difference?

3 A. Mechanical engineer has studied mechanical
4 engineering and an electrical engineer has studied
5 electrical engineering. I have taken courses in
6 both electrical engineering and mechanical
7 engineering.

8 Q. On Page 1 of your testimony -- direct
9 testimony, Mr. Shifrin, you describe various
10 positions that you have held with Commonwealth
11 Edison over your 28 years of employment. Do you see
12 that?

13 A. Yes.

14 Q. Were those all positions that you held with
15 Com Ed during that time period?

16 A. They might have been called other things. I
17 think there were other titles that I had.

18 Q. So could you tell us what your duties were
19 as whatever the comparable title was to senior sales
20 engineer?

21 A. Yes. I was assigned a geographical area of
22 responsibility in the office that I worked out of at

1 the time and was responsible for new construction,
2 existing construction, at first only residential and
3 then later years residential -- commercial and
4 industrial customers.

5 Q. And so you were the liaison between Com Ed
6 and those customers; is that right?

7 A. Yes.

8 Q. Would that be a fair statement?

9 A. Yes.

10 Q. Then you became a senior marketing
11 executive. How did your duties change with respect
12 to that position?

13 A. I was given additional responsibilities and
14 was training some of the people in the department or
15 they were allowed to ask me questions --

16 Q. So --

17 A. -- mentoring them maybe if that's the right
18 word.

19 Q. So it was a supervisory-type position?

20 A. No.

21 Q. Well, what were your duties then?

22 A. Similar to what I mentioned before.

1 Q. And what about your position as senior
2 account executive or whatever the comparable title
3 was?

4 A. Similar.

5 Q. Okay. Now you provided rebuttal testimony
6 to Com Ed witness Woodson Sherer, who was Com Ed's
7 meter expert, and Lynn Miller, Com Ed's billing
8 expert, correct?

9 A. Yes.

10 Q. And during the time you were employed by
11 Com Ed, did you ever perform meter tests for Com Ed?

12 A. No.

13 Q. Did you ever perform meter tests as an
14 independent consultant?

15 A. No.

16 Q. Did you ever work in Com Ed's billing
17 department?

18 A. Billing?

19 Q. Billing.

20 A. No.

21 Q. As an employee of Com Ed, what familiarity
22 did you have with Com Ed's IBS or CIS billing

1 systems?

2 A. Those were the systems that the bills were
3 rendered by Commonwealth Edison during the times
4 that I was there.

5 Q. Did you ever prepare a bill manual for Rate
6 6 customers?

7 A. Literally prepare it or ask for data for its
8 preparation?

9 Q. Prepare it.

10 A. Literally prepare it, no.

11 Q. Do you know when the CIS billing system was
12 started by Com Ed?

13 A. No.

14 Q. When you left Com Ed in 1992, did you leave
15 voluntarily?

16 MR. MUNSON: May I request a side bar on this
17 issue, Judge?

18 JUDGE GILBERT: All right. When you ask for a
19 side bar, do you mean something off the record?

20 MR. MUNSON: I do.

21 JUDGE GILBERT: All right. We'll go off the
22 record for a moment.

1 (Off the record.)

2 Let's go back on the record.

3 MR. GOLDSTEIN: A question's outstanding. I
4 assume there's an objection.

5 JUDGE GILBERT: Well, let's not make objections
6 for the other side. Why don't you just re-ask the
7 question.

8 MR. GOLDSTEIN: Yes.

9 MR. GOLDSTEIN: Q. When you left Com Ed in 1992,
10 did you leave voluntarily?

11 MR. MUNSON: Objection as to relevance and for
12 the reasons stated in our side bar.

13 JUDGE GILBERT: All right. Mr. Goldstein, what
14 would be the relevance of this?

15 MR. GOLDSTEIN: The relevance deals with
16 Mr. Shifrin's state of mind and his dealings with
17 Com Ed, particularly with respect to billing
18 disputes which he generally describes following this
19 Page 2 of his testimony.

20 JUDGE GILBERT: All right. I'll overrule the
21 objection.

22 THE WITNESS: The answer I'm officially retired

1 from Commonwealth Edison Company in good standing.

2 MR. GOLDSTEIN: Q. Beginning on Page 2 of your
3 direct testimony, you outline your experience with
4 respect to electrical billing issues after working
5 for Com Ed; is that correct?

6 A. Did you say that's on Page 2?

7 Q. Yes.

8 MR. MUNSON: Lines 24 to 31, Counsel --

9 MR. GOLDSTEIN: Yes.

10 MR. MUNSON: -- of your direct.

11 THE WITNESS: Of the direct.

12 MR. GOLDSTEIN: Q. Do you see that, Mr. Shifrin?

13 A. Yes.

14 Q. And I'm correct that over the past
15 approximately 13 years, maybe a little bit more,
16 you've been an independent electric utility
17 consultant, correct?

18 A. Electric bill analyst.

19 Q. Have you ever been an electric bill analyst
20 for any other electric utility other than Com Ed?

21 A. Yes.

22 Q. Which one or ones?

1 A. The first one I don't remember and the
2 second one is Winnetka.

3 Q. The Village of Winnetka?

4 A. The Village of Winnetka.

5 Q. And where is the Village of Winnetka's
6 electric power?

7 MR. MUNSON: Objection as to relevance.

8 JUDGE GILBERT: Well, Mr. Goldstein, where are we
9 going with this one?

10 MR. GOLDSTEIN: Well, I thought the village gets
11 it from Com Ed, so if he's --

12 JUDGE GILBERT: The objection isn't to whether or
13 not he knows the answer. The objection is to the
14 usefulness in this proceeding and that I'm asking
15 you to identify for me.

16 MR. GOLDSTEIN: I would like to know -- I'm
17 really searching for the kind of client that he's
18 been representing, and I thought the Village of
19 Winnetka was a client rather than the power source.
20 That's why he had me confused.

21 JUDGE GILBERT: Overruled. Go ahead. Ask the
22 question.

1 MR. GOLDSTEIN: Do you understand the question,
2 Mr. Shifrin?

3 THE WITNESS: Could you repeat it.

4 MR. GOLDSTEIN: Q. Sure. You said that you
5 represented the Village of Winnetka.

6 A. No, I didn't.

7 Q. Who did you represent?

8 A. A customer --

9 Q. A customer?

10 A. -- buy electric for the Village of
11 Winnetka.

12 Q. Over the past 13-plus years, can you tell me
13 approximately how many clients you have been
14 providing electric bill consulting services to?

15 A. I never added them up.

16 Q. Do you know how many condominium
17 associations that you have provided electric billing
18 consulting to?

19 A. I couldn't. Again, I don't have a number.

20 Q. At this time you are an independent
21 consultant, is that right? Do you have any
22 employees?

1 A. No.

2 Q. Who does your typing, and your spreadsheets,
3 and all the other things that need --

4 A. I do.

5 Q. Since leaving Com Ed in 1992, have you ever
6 been associated with any of the persons in the
7 electric utility billing consulting business?

8 MR. MUNSON: Objection; relevance.

9 MR. GOLDSTEIN: I have a right -- he's provided
10 background. I have the right to search into that
11 background, Judge.

12 JUDGE GILBERT: Yes, I agree. I mean, it
13 generally goes to weight and credibility to be
14 accorded his testimony. Overruled.

15 MR. MUNSON: Answer.

16 THE WITNESS: Could you repeat the question.

17 MR. GOLDSTEIN: Could you read the question back.

18 (Question read by
19 reporter.)

20 THE WITNESS: Yes.

21 MR. GOLDSTEIN: Q. Let's talk about your
22 employment with regarding Americana Towers. Do you

1 have an employment agreement with Americana Towers?

2 A. Not per se, no.

3 Q. Well, is there some oral agreement that you
4 have with Americana Towers with respect to this
5 proceeding?

6 A. Yes.

7 Q. And when did you enter into that oral
8 agreement with Americana Towers?

9 A. I don't remember the exact dates or years.

10 Q. Is there some document or some written
11 instrument that would inform us when you entered
12 into an agreement with Americana Towers?

13 A. Probably.

14 Q. Where is that and what is it? Let's start
15 with where is it.

16 A. Right now I don't have it with me, so I
17 don't know where it's at.

18 Q. Is there some written memorandum that you
19 entered into with Americana Towers for your
20 employment?

21 A. I think so.

22 Q. Do you know?

1 A. I would say yes more than no, yes.

2 MR. GOLDSTEIN: Could that be produced, Counsel?

3 MR. MUNSON: If I may be clear, you are asking
4 for an employment agreement, and he said no. Now
5 assuming you don't mean -- that you mean consulting
6 agreement?

7 MR. GOLDSTEIN: Same thing.

8 MR. MUNSON: I don't believe we have it on us and
9 I don't believe that was asked in a data request.

10 MR. GOLDSTEIN: It was not asked as a data
11 request. I agree. I'm making on the record a
12 request for it.

13 MR. MUNSON: I could, well, endeavor to object to
14 the timeliness of the request. The hearing is --
15 Mr. Shifrin's here for testimony. He wasn't asked
16 that. I'm not sure what relevance it has and I
17 think its timing is not ripe for such a request, so
18 I object to that request.

19 MR. GOLDSTEIN: Judge, let's call things the way
20 they are in this proceeding. We propounded ten data
21 requests to Mr. Munson and Americana Towers around
22 September 1st with our testimony being due on

1 October 10th. Without getting into the specifics,
2 by in large, with respect to those data requests, we
3 were totally stonewalled.

4 On that basis, I did not see any reason
5 to continue making data requests to the company and
6 I, in my judgment, and I think I have the right to
7 do this, asked those kinds of questions that I
8 wished to ask in cross-examination rather than via
9 the data request route.

10 These are absolutely relevant questions
11 to this proceeding. I have a right to know what
12 the arrangement is between Mr. Shifrin and Americana
13 Towers with respect to any potential refund that
14 this Commission may grant.

15 MR. MUNSON: If I may briefly respond to that,
16 Counsel for Com Ed never conferred on those data
17 requests, pursuant to Rules of Practice --
18 Commission Rules of Practice, Section 200.350, nor
19 did they provide a motion to compel for any
20 information, and I don't think it's correct that
21 they asked for any specific employment or consulting
22 agreements in those data requests, and so the

1 request at this point is not timely. I don't know
2 how we get it into the record. I object.

3 JUDGE GILBERT: Yes. I will sustain the
4 objection.

5 MR. GOLDSTEIN: What is the objection, too,
6 Judge?

7 JUDGE GILBERT: The objection is to posing this
8 data request at this point.

9 MR. GOLDSTEIN: So we are going to be barred
10 from not knowing what the agreement is between
11 Mr. Shifrin and Americana Towers? Is that your
12 ruling, Judge?

13 JUDGE GILBERT: Well, before you build up a good
14 head of steam, Mr. Goldstein, that is exactly my
15 ruling. You complained earlier --

16 MR. GOLDSTEIN: I take exception.

17 JUDGE GILBERT: -- to Mr. Rollins in timeliness
18 of his filing. You said his testimony could have
19 been presented earlier because it was inherently
20 part of the case and I think Mr. Shifrin's
21 arrangements with Americana are similarly and
22 inherently it's part of the case. You acknowledge

1 yourself that you voluntarily refrained from issuing
2 certain data requests because you didn't feel you
3 were getting good answers to previous data requests.
4 That was your choice. We had processes in place if
5 a dispute arise with respect to discovery of those
6 notes to use that process.

7 MR. GOLDSTEIN: I also have a right, Judge, to
8 ask questions that are relevant and deal with
9 Mr. Shifrin's employment.

10 JUDGE GILBERT: In no way have I precluded --

11 MR. GOLDSTEIN: I take strong exception to your
12 ruling.

13 JUDGE GILBERT: Fine. I in no way precluded you
14 from asking questions of Mr. Shifrin. You are free
15 to do that in this hearing.

16 MR. GOLDSTEIN: Q. Under your agreement with
17 Americana Towers, you are on an hourly basis in your
18 employment?

19 MR. MUNSON: I object to privilege.

20 MR. GOLDSTEIN: There's a consulting/client
21 privilege, Judge?

22 JUDGE GILBERT: What privilege are you referring

1 to, Mr. Munson?

2 MR. MUNSON: He's asking for what sort of money

3 he makes and he has a right --

4 MR. GOLDSTEIN: I'm not asking that at all,

5 Judge. I'm asking what his financial arrangement is

6 with his client.

7 JUDGE GILBERT: I agree with Mr. Goldstein.

8 Overruled.

9 THE WITNESS: The question is --

10 MR. GOLDSTEIN: Q. Are you working on an hourly

11 basis for Americana Towers?

12 A. No.

13 Q. Are you working on a percentage basis of

14 what would be potential refunded in this proceeding?

15 A. No.

16 Q. What is your arrangement with Americana

17 Towers with respect to your billing consulting?

18 A. It's on a contingency basis.

19 Q. Didn't I ask you that? What percentage is

20 your contingency, if there is a recovery or refund

21 from Com Ed, as a result of this proceeding?

22 A. One-third.

1 Q. So I'm clear, if Americana is not granted
2 any refund by the Commission, you would not get paid
3 for all the hours you put in in this proceeding,
4 correct?

5 A. Correct.

6 Q. Could you describe for me how you became
7 Americana's billing consultant? Did you drive up to
8 Americana Towers one day and say here I am, I want
9 to review your electric bills, or how did all that
10 work?

11 A. I have done that, but I don't remember if
12 that's what I did with Americana.

13 Q. Did someone refer you to Americana Towers?

14 A. Again, the specifics of that, I don't
15 remember.

16 Q. But, in any event, based upon potential
17 recovery possibility, you have a relatively large
18 vested interest in the outcome of these proceedings,
19 do you not?

20 A. Is that -- are you asking for my opinion?
21 I'm not going to agree to the word vested interest
22 is relevant. I get one-third of on a contingency

1 basis. You can put the words in. I don't know if
2 that's the right word that I would use.

3 Q. Let me ask you this. Since you don't -- do
4 you remember when you were retained as billing
5 consultant by Americana Towers, the date?

6 A. No.

7 Q. Do you have any kind of log book, date book,
8 or any other writing that you could provide that
9 would tell us when you first met with Americana
10 Towers?

11 A. No.

12 Q. Do you recall with whom you met with at
13 Americana Towers when you were first retained?

14 A. No.

15 Q. Was it Mr. Armetta?

16 A. I did meet Mr. Armetta eventually. I don't
17 know if he was the first one.

18 Q. Do you know where you met?

19 A. No. It could have -- it might have been
20 through their downtown office. I'm sorry. The
21 management downtown office.

22 Q. So you may have met at the south office?

1 A. That's correct.

2 Q. But you don't recall?

3 A. Not specifically for this building or every
4 building. I don't remember the specifics.

5 Q. Do you keep any kind of record book, a log,
6 or any kind of writing that would tell you how much
7 time you spent in preparation for this proceeding?

8 A. No. I've never done that for any customers
9 that I helped.

10 Q. Because all customers that you dealt with
11 you have been dealing with them on a percentage
12 basis?

13 A. Not necessarily.

14 Q. So if you had a customer or client that you
15 were providing billing consulting services with on
16 an hourly basis, would you not keep a log of the
17 time you spent and the days you spent working for
18 that particular client? Is that your testimony?

19 A. If I was retained on a hourly basis, of
20 course, that's what I would do.

21 Q. But when you are retained on a percentage
22 basis, you do not keep any kind of record of the

1 amount of time you spent working for that particular
2 client?

3 A. That's correct.

4 Q. And that would also hold true for Americana
5 Towers?

6 A. That's correct.

7 Q. Now during the course of this complaint
8 proceeding, you provided copies of various bill
9 statements, is that right --

10 A. Yes.

11 Q. -- to Com Ed?

12 A. Yes.

13 Q. Do you have the original bill statements
14 that were issued by Com Ed to Americana Towers?

15 A. No.

16 Q. Who has that? Do you know?

17 A. Probably Americana.

18 Q. Well, who provided you with copies of the
19 various bill statements?

20 A. Americana.

21 Q. Who in particular at Americana?

22 A. I don't remember. It wasn't done all at one

1 time, so it could have been a number of people and I
2 don't remember who provided.

3 Q. Was one of those people Mr. Armetta, John
4 Armetta?

5 A. On occasion, yes.

6 Q. Who else could it have been?

7 A. I don't know. Secretaries.

8 Q. Do you know as a matter of fact who has the
9 original of those statements?

10 A. No.

11 Q. Now, as you are aware, Mr. Shifrin, much has
12 been made by Com Ed of various missing bill
13 statements. Are you aware -- you are aware of that,
14 are you not, and you address that in your testimony,
15 both direct and rebuttal, correct?

16 A. Yes.

17 Q. And let me ask you first, as I understand
18 your testimony in this proceeding, you do not
19 believe that the missing bills have any real impact
20 on the refund to be given Americana Towers? Would
21 that be a fair assessment?

22 A. No.

1 Q. What do you believe is the impact of the
2 missing bills?

3 A. Well, there's really only two missing bills.
4 There was once you accused us of having four missing
5 bills. The fourth missing bill had only the first
6 page of four pages missing and that was found, so
7 there's three missing bills.

8 Q. When was that found? Do you recall?

9 A. It was provided in my direct or I think in
10 my direct testimony.

11 Q. All right. And then there was a second bill
12 that was found, another bill that was found?

13 A. No. No, but the missing bills were
14 recreated using the bill -- before that missing
15 bill, and the bill after that missing bill
16 subtracting the meter readings and getting an exact
17 -- to the exact kilowatt-hour usage.

18 Q. I didn't ask you -- I'm making a motion --
19 strike that. I asked you with respect to what the
20 impact of those bills are and you did not agree with
21 me that there was little to know impact, and now you
22 are explaining that -- in effect, you are saying

1 that there was little or no impact because you had
2 previous subsequent bills. So what is it? Is there
3 any impact or not with respect to missing bills?

4 A. It depends on which bills you are talking
5 about.

6 Q. Well --

7 MR. MUNSON: If I may, I make an objection. Can
8 you just explain impact. I think that's just a
9 vague term.

10 MR. GOLDSTEIN: Well --

11 MR. MUNSON: I think it's a vague question.
12 That's what he's having trouble with.

13 MR. GOLDSTEIN: Q. Is that correct that you are
14 having trouble with the word impact?

15 A. I probably prefer you to ask me which
16 missing bill had or didn't have an impact.

17 Q. Okay. There are now two missing bills,
18 correct?

19 A. Yes.

20 Q. And what --

21 JUDGE GILBERT: Could we just settle that one
22 point. I'm a little confused. You said one, then

1 you said three, then they're back to two. Are there
2 two missing bills?

3 MR. GOLDSTEIN: I'm confused myself.

4 MR. MUNSON: Why don't you answer.

5 MR. GOLDSTEIN: That's why I want him to go
6 through the bills and see what bills.

7 MR. MUNSON: I object, too, and can he go through
8 the bills, the four bills.

9 THE WITNESS: There were one -- four missing
10 bills that you claim were -- you, Commonwealth
11 Edison Company, claim was missing, and admittedly
12 they were missing in the total time period of
13 billings that we provided, now there's two --

14 MR. GOLDSTEIN: Q. Okay.

15 A. -- missing bills that were recreated. Of
16 those two, ask me.

17 Q. Which two bills were missing?

18 A. Let's start with that. There was a bill
19 missing November 6, 1996 to December 9, 1996.

20 Q. Is that bill still missing?

21 A. Yes.

22 Q. Okay.

1 Q. What's the second bill that's missing?

2 A. I think it's September 12, 1994 to --

3 Q. I'm sorry. I missed that.

4 A. September 12, 1994 to October 11, 1994.

5 Q. And that bill is still missing?

6 A. Yes.

7 Q. And now there are originally four missing

8 bill, correct?

9 A. Yes, out of '96 or something like that.

10 Q. When were those other missing bills that you

11 now claim were provided? What were the dates of

12 those bills?

13 A. I don't know the --

14 Q. Could that be provided?

15 A. Well, it was provided.

16 Q. Later on in this -- well, I want it on the

17 record here. Something that you provided us?

18 A. Yes. It would be only on one of them. It

19 would be Page 1 of 4 pages of which wasn't

20 necessarily to extract the data from because Page 2

21 had the data which you had a copy.

22 Q. Now that first page that was provided as

1 part of your direct testimony in this proceeding, is
2 that right, the one that --

3 A. That one, the first missing page --

4 Q. Yes.

5 A. -- of the fourth bill?

6 Q. Yes.

7 A. It is my understanding that it was addressed
8 in there and provided.

9 Q. And there was a third bill -- that was the
10 fourth bill. There was another bill that was
11 missing. Do you know when that was provided?

12 A. No. I don't have the -- no, I don't know.
13 The first missing bill of the four might have been a
14 bill that was irrelevant to our claim and to any
15 comment that there was a credit provided on that
16 bill, it is -- it was before any of the -- before
17 the billing errors occurred.

18 Q. All right.

19 JUDGE GILBERT: Let me interject just so we don't
20 get hopefully muddled here. On Page 21 of direct
21 testimony, tip the scales here, Mr. Goldstein, if
22 you are moving towards an objective, I just want to

1 be clear for our records what we are talking about.

2 As I read Page 21 of the direct
3 testimony, there's a reference to a fourth missing
4 bill. It's for service between 3-12-97 and 4-10-97
5 and that's the bill described as having only a
6 single missing page, and that's all I wanted to say.

7 MR. GOLDSTEIN: Okay. Fine.

8 MR. MUNSON: And now missing pages provided as
9 Exhibit 1.6.

10 MR. GOLDSTEIN: Correct.

11 MR. GOLDSTEIN: Q. Now am I correct that you do
12 not know the date that you began your review of
13 Com Ed's billing of Americana?

14 A. I do not know the dates of when Com Ed began
15 billing Americana.

16 Q. No. No, the day you began your review of
17 Com Ed's billing of Americana Towers.

18 A. I don't know the date, no.

19 Q. Do you know the year?

20 A. Let me make sure that I understand that
21 question or shall I answer it. It was in August or
22 September of 2003 that I was provided with much or

1 most of the complete set of billings that I have
2 provided.

3 Q. And do you recall when you requested that
4 information from Americana Towers or Sudler?

5 A. During the previous month, I assume.

6 Q. Now when you were provided those bills, were
7 you provided the originals of those bills?

8 A. No.

9 Q. Did you request the original bills?

10 A. No, they're copies. I have copies.

11 Q. You have copies?

12 Did you request the original bills?

13 A. The copies were made from the original bills
14 if that -- if that's answering your question.

15 Q. No, it isn't.

16 A. Did I request --

17 Q. The original bills rather than the copies.

18 A. To possess them, to be put into my hands,
19 the original bills, and to carry them away from the
20 premises?

21 Q. Yes.

22 A. No, I wouldn't do that.

1 Q. Did you see the original bills?

2 A. Yes. Well, I'm not sure I did see some of
3 them when I was searching for the original bills,
4 but I didn't -- I can't say that I saw all or even
5 some of the original bills that were provided to me.

6 Q. Do you recall when you attempted to search
7 for those original -- search for those missing
8 bills?

9 A. I thought I just said that it was within
10 months before I received a full complement of bills
11 which was in August or September of 2003.

12 Q. Could that have been in say March or April
13 of 2003?

14 A. No, because the bills came in in --
15 different bills came in at different times.

16 Q. When did you first receive the copies of the
17 bills?

18 A. Probably in the Summer of 2003.

19 Q. And so did you request those bills in the
20 Spring of 2003?

21 MR. MUNSON: Asked and answered.

22 JUDGE GILBERT: Objection?

1 MR. GOLDSTEIN: I know if he's answered, Judge.

2 I'm trying to find out.

3 JUDGE GILBERT: It's overruled. Go ahead.

4 THE WITNESS: I don't remember the exact month or
5 date of when I first --

6 MR. GOLDSTEIN: Q. Is there any kind of writing
7 that would tell you that from Sudler or from
8 Americana Towers that transferred those copies of
9 the bills to you?

10 A. The dates of my spreadsheets, such as this,
11 or revised or I would enter the data from those
12 bills and probably had a date that I started.

13 Q. Do you have any idea when -- what the date
14 was that you started your spreadsheet analysis of
15 the Com Ed bills to Americana?

16 A. Yes, and, as I said, it was in August or
17 September of 2003.

18 MR. GOLDSTEIN: I'm sorry. Could you read the
19 last answer back, please.

20 (Question read by
21 reporter.)

22 MR. GOLDSTEIN: Q. Now, as I understand some of

1 your rebuttal testimony, Mr. Shifrin, you now
2 acknowledge that for the November 1996 bill period
3 Americana Towers did receive a bill adjustment; is
4 that right?

5 A. I'm convinced that that's true.

6 Q. Okay. And that was reflected in lowering
7 the amount of your proposed refund with respect to
8 your rebuttal testimony, correct?

9 A. That's correct. The error -- the gross
10 error was the correctly refunded in the next billing
11 period, which is the missing bill -- one of the
12 missing billing periods, which is because there was
13 no charge for that missing billing period. There
14 was no amount due. It was no voucher or check
15 issued by Americana or Sudler to make a payment to
16 Commonwealth Edison Company so they did not file
17 that bill with their bill payments. Because it
18 wasn't paid, it was a credit more than the amount of
19 the next bill, and I acknowledge that.

20 Q. Now with respect to those two missing bills
21 that we have been trying to discuss this morning, do
22 you believe that those missing bills contain

1 adjustment credits given to Americana Towers by
2 Com Ed?

3 MR. MUNSON: Question 8 of the objection, can you
4 specify which two missing bills you mean?

5 MR. GOLDSTEIN: Well, the one for sure, let's
6 talk about the September 12, 1994 to October 11,
7 1994 bill.

8 THE WITNESS: You are asking me? To the best of
9 my knowledge, there was no credit issued on that
10 billing period for anything. Commonwealth Edison
11 Company didn't produce the IBS or recreated
12 billPRT, whatever it's called, such as when they
13 found the other missing bill, it wasn't produced and
14 we don't have it. It's three months after a prior
15 grievous mistake and that was not credited, but any
16 of the missing bills did not have -- not have a
17 credit on it, except the ones addressed; otherwise,
18 they wouldn't have continued to be billed
19 improperly.

20 JUDGE GILBERT: Wait just a moment. Billprt,
21 b-i-l-l-p-r-t.

22 MR. GOLDSTEIN: Q. Why do you believe credits

1 appeared on the bills following missing bills?

2 A. Did I say that?

3 Q. Is that the case?

4 A. Well, could you be more specific?

5 Q. Just take the one bill in particular --

6 A. Which?

7 Q. -- that we have been discussing.

8 A. Which one?

9 Q. The credit -- this credit is appearing on
10 the bill following that -- the one that was missing.

11 A. All right. The bill -- the missing bill for
12 November 6, 1996 to December 9, 1996 I believe was
13 the evidence that you -- that Commonwealth Edison
14 Company produced that a credit was issued for a
15 mistake of 738 kilowatts should have been 7.38
16 kilowatts, because there was no payment made, that
17 bill is missing. It was not sent for payment and
18 the bill after that had a credit of
19 \$2828-and-some-odd-cents, which falls in line with
20 what the prior missing bill would have been in the
21 \$8,000 range, and \$11,000 credit would have been a
22 \$3,000 credit balance of previous credit that the

1 next bill says, yes, so it kind of falls into line
2 with. I now agree that that was refunded.

3 Q. Were there credits issued on bills
4 subsequent to the missing bill for the period
5 September 12, 1994 to October 11, 1994?

6 A. No. Let me qualify that. I don't have the
7 bill in front of me, but if I did, maybe that's a
8 bill where there were credits for designated late
9 payment charges.

10 Q. But there were credits on that bill,
11 correct?

12 A. Shown as previous late payment charge
13 credits that shouldn't have been imposed to begin
14 with and was refunded but not for any other reason
15 and not included in our claim.

16 Q. Let's now look at the initial formal
17 complaint and the amended complaint filed in this
18 particular docket, Mr. Shifrin.

19 MR. MUNSON: Mr. Goldstein, give me a second.
20 I'll dig it out and hand it to him unless you have a
21 copy.

22 MR. GOLDSTEIN: You can dig it out. I just have

1 a few questions and I think they're pretty simple.

2 (A brief pause.)

3 MR. MUNSON: Specifically, what, Mr. Goldberg,
4 the amended formal complaint --

5 MR. GOLDSTEIN: Q. And the initial --

6 MR. MUNSON: -- and the initial? I don't think I
7 have an extra amendment if you don't.

8 (tendered.)

9 I do have it. That's the amended two
10 affidavits.

11 MR. GOLDSTEIN: Q. First, Mr. Shifrin, in John
12 Armetta's initial complaint filed in September 29,
13 2005, he requested a precise refund of \$88,903.55;
14 is that correct?

15 A. Wasn't it 100,000?

16 Q. That's the initial complaint. I'm talking
17 about not the --

18 JUDGE GILBERT: Just to move this along,
19 Mr. Goldstein, where would he find that number?

20 MR. MUNSON: Because on the informal --

21 MR. GOLDSTEIN: Q. Subject to check, would you
22 agree to that? We'll do so so we don't hold up the

1 proceedings.

2 A. Agree to what?

3 Q. The amount of \$88,903.55.

4 A. No.

5 Q. Well, let me state numbered Paragraph 2 on
6 Page 2 of the original complaint does contain that
7 number and then below that the complaint whose then
8 Mr. Armetta himself rounded it up to a hundred
9 thousand to accommodate interest. Those are the
10 numbers. That's correct, is it not, Mr. Shifrin?

11 A. Yes.

12 Q. And the \$88,903.55 amount you provided that
13 precise figure to Mr. Armetta for the purposes of
14 filing his complaint, did you not?

15 A. Yes.

16 Q. And do you recall what date you provided
17 those figures to -- that figure to Mr. Armetta? I
18 assume it was sometime prior to filing the
19 complaint, correct?

20 A. Prior to June 29th of 2005?

21 Q. Yes. Do you know what date you provided
22 that?

1 A. And it was prior to January 28, 2003.

2 Q. Do you know what date that was prior to June
3 28, 2003?

4 A. Within a couple weeks or couple of months
5 prior to that.

6 Q. Okay. But you do not recall the precise
7 date --

8 A. Of course not.

9 Q. -- would that be fair to say?

10 A. Yes.

11 Q. And to be precise, Mr. Armetta claimed that
12 Com Ed overbilled American Towers \$28,109.08; is
13 that right? If you look through -- I don't think
14 you have the attachments to the original complaint,
15 maybe we could provide that. Would you accept that
16 subject to check?

17 A. Where in here is --

18 Q. There are additional sheets and pages that
19 were attached to the original complaint and it's
20 contained in there, Mr. Shifrin.

21 A. Well, the number you are quoting is where?

22 Q. Would you accept, subject to check -- we'll

1 provide that exact place of it. For the moment, yes
2 or no?

3 MR. MUNSON: Just what is he agreeing to?

4 MR. PARISE: Let me just pull it out and he can
5 take a look at it

6 (Document tendered.)

7 THE WITNESS: And could you repeat your question.

8 MR. GOLDSTEIN: Q. The overbilling amount that
9 was claimed was \$28,109.08 correct?

10 MR. MUNSON: Isn't it 41,000?

11 THE WITNESS: I show 41,278 plus \$811.34, so it
12 should be --

13 MR. MUNSON: Oh, may I? Mr. Goldstein, you are
14 asking the total of demand costs --

15 MR. GOLDSTEIN: Correct.

16 MR. MUNSON: -- are 28,109.08?

17 MR. GOLDSTEIN: Correct.

18 MR. MUNSON: Then he's adding in the state tax,
19 and regulatory tax, and franchise cost, and city
20 tax --

21 MR. GOLDSTEIN: That's correct.

22 MR. MUNSON: -- and then he's adding in interest.

1 MR. GOLDSTEIN: And he's also -- as part of
2 \$88,000 total, he's also adding in an amount of
3 47,625.36 which is claimed to be billed under the
4 wrong rate.

5 MR. GOLDSTEIN: Q. Would all that be accurate,
6 Mr. Shifrin?

7 A. You threw out a couple of numbers. Let me
8 make sure I'm answering specifically. Ask me again
9 the specific number.

10 Q. Okay.

11 A. For what --

12 Q. What does -- do you see the figure of
13 \$28,109.08?

14 A. Yes.

15 Q. What does that consist of?

16 A. That's for demand charge overbillings
17 without taxes, without interest, and added to that
18 is \$552.50.

19 Q. What does the 552.50 consist of?

20 A. The difference between the bill -- the
21 billing period of 64 -- I'm sorry -- 6-13-94 to
22 7-13-94. There was a 100 kilowatts incorrectly

1 imposed demand and it should have been zero, but I
2 took only 50 kilowatts, so I corrected it later in
3 writing.

4 Q. So it's still just overbilling of demand?

5 A. That's correct.

6 Q. Okay. And the 47,625.36 figure is the
7 amount that you claimed was billed under the wrong
8 rate to Americana; is that right?

9 A. Yes.

10 Q. Okay. And --

11 A. At that time.

12 Q. And when we're talking about billing, you
13 are aware as a former employee of Com Ed and
14 subsequently as a billing analyst who's looked at
15 enumerable Com Ed bills, you know that Com Ed does
16 not keep customer electric bills for a period longer
17 than two years; isn't that right?

18 A. I'm not aware.

19 Q. You are not aware of that?

20 A. No.

21 Q. Are you aware what the Commission rules are
22 with respect to Com Ed's ability to retain electric

1 bills?

2 A. I heard that -- I never read it, but I heard
3 that it was a 24-month period. Either you don't
4 have to retain bills or you're not obligated to
5 provide them to the customer after 24 months.

6 Q. And --

7 A. Whether you retain them or not, I don't
8 know.

9 Q. Do you know approximately how many customers
10 Com Ed has, do you not? You know it's in the
11 millions, do you not?

12 A. I'm sure. You are talking Com Ed number of
13 customers, not my number of customers?

14 Q. Yes, Com Ed's number or customers.

15 A. I just want to make sure.

16 Q. Now in the amended complaint filed on
17 January 24, 2006, the same types of calculations
18 were made as part of that particular complaint
19 correct?

20 A. Yes.

21 Q. And the only difference being that -- well,
22 you came up to the same total amount of the alleged

1 refund, a hundred thousand, is that correct?

2 A. Yes, at that time.

3 Q. Now you filed your testimony when in this
4 proceeding? Do you recall?

5 A. The direct testimony?

6 Q. Yes.

7 A. Whatever it says on here. Is there a date
8 on here? I don't have the date on this.

9 Q. Approximately six or eight months later you
10 agree with me that when you filed your direct
11 testimony you are now seeking a refund of
12 \$194,026.04; is that right?

13 A. I recall that number.

14 Q. And then you reduced that amount in your
15 rebuttal testimony to \$178,235.43? And am I correct
16 that that's based strictly on the compounding of
17 interest at a rate of 5 percent per annum?

18 A. No.

19 Q. What else is involved?

20 A. Well, as you know, the original complaint
21 didn't include the overbilled kilowatthours. It
22 only included overbilled kilowatts of demand.

1 Q. Now when you did -- you did compound
2 interest at a 5 percent annual rate, did you not?

3 A. Yes.

4 Q. And was that 5 percent compounded rate based
5 on the original total refund request of \$88,903.55?

6 MR. MUNSON: At what period of time?

7 MR. GOLDSTEIN: Well, for whatever time he used
8 in his direct testimony or in his rebuttal.

9 THE WITNESS: In the direct testimony, the
10 \$88,000 total at the time, which did not include
11 kilowatthour overcharges, included a 5 percent
12 compounded interest, and taxes -- state taxes, and
13 municipal taxes, and franchise costs.

14 MR. GOLDSTEIN: Q. Now in order to rack (sic) up
15 the refund amount to this 194,000-plus or
16 178,000-plus, depending upon which testimony we are
17 looking at, Mr. Shifrin, if you did increase
18 Mr. Armetta's complaint by claiming that the demand
19 readings for the first nine months of 1993 were
20 triple instead of double as Mr. Armetta's original
21 claim; isn't that correct?

22 A. Triple. They were triple. They were three

1 times the amount they were over a 30-year period.

2 Q. And you also added the claim for energy
3 tripled during the 9-month period that from 1993
4 which had not been included in Mr. Armetta's claimed
5 refund wouldn't that be accurate, too?

6 A. During those nine months out of a 30 year --
7 35-year period, those demands tripled and the energy
8 tripled.

9 Q. And looking at the initial complaint and the
10 amended complaint, you prepared that -- those
11 complaints really for Mr. Armetta, did you not, and
12 you provided them with those figures that he used in
13 the amended -- in the initial and amended complaint,
14 correct?

15 A. Well, Commonwealth Edison Company provided
16 those figures.

17 Q. Not the amount of refunds requested. You
18 provided that information, did you not?

19 A. Well, that was provided within the rate
20 structure of Commonwealth Edison Company's billings
21 and rates and that was provided by Com Edison
22 Company.

1 Q. And when you first prepared the claim for
2 Mr. Armetta that was submitted, would you agree he
3 must have agreed that the initial claim was the
4 amount that Com Ed allegedly overbilled?

5 A. I'm trying to understand the question, but
6 if I do understand it correctly, that was the amount
7 that we thought was overbilled -- overpaid at that
8 time.

9 MR. GOLDSTEIN: Could I just a short moment?

10 JUDGE GILBERT: (Nodded head.)

11 MR. GOLDSTEIN: Could we go back on the record,
12 Judge?

13 JUDGE GILBERT: Yes.

14 MR. GOLDSTEIN: Q. Okay. Now let's change the
15 subject matter a little bit, Mr. Shifrin. Did you
16 review the meter test that Mr. Sherer provided as
17 Exhibit 3.1 and 3.2?

18 A. I reviewed his testimony about those meter
19 tests.

20 Q. And attached -- you did see the exhibit
21 attached to his testimony, did you not?

22 A. Yes.

1 Q. You looked at those two, did you not?

2 A. Yes.

3 Q. And are you familiar with the Com Ed meter

4 testing process?

5 A. No.

6 Q. Are you aware that the Com Ed meter testing

7 process has been approved by the Illinois Commerce

8 Commission?

9 A. I'm not aware of that.

10 Q. Are you aware that Commerce Commission

11 personnel comes out periodically to inspect and

12 evaluate Com Ed's meter reading process?

13 A. No.

14 Q. Are you aware that at any time a meter is

15 removed and found to be running too fast that an

16 adjustment is worked to provide a billing credit

17 based upon how fast the meter was running?

18 A. No.

19 Q. Do you know or are you aware that Com Ed

20 keeps records on rough estimated readings, all fast

21 meters? I can repeat.

22 JUDGE GILBERT: Please.

1 MR. GOLDSTEIN: Strike the question.

2 MR. GOLDSTEIN: Q. Are you aware that Com Ed
3 keeps records on all fast running meters? I'll get
4 it right.

5 A. For how long?

6 Q. Well, at least as long as we had those meter
7 tests that were provided as Exhibits 3.1 and 3.2.

8 A. Unlike the billings, is that what we are
9 saying?

10 Q. I'm just talking about the running of the
11 meters.

12 A. I'm not aware of that, but I'm wondering if
13 it's the same length of time that they're required
14 to keep electric bills.

15 Q. In addition to the meter records, are you
16 aware that Com Ed keeps records regarding all of the
17 billing adjustments worked as a result of the fast
18 running meters?

19 A. No.

20 Q. Now insofar as your criticism of
21 Mr. Sherer's testimony, can you tell me on what
22 basis -- since you have never tested a meter and

1 have no firsthand knowledge of the company's meter
2 testing process, what is the basis of your
3 criticism?

4 A. I was wondering how complete it was and why
5 it is 180 degrees opposite from reality.

6 Q. All right. But you do agree that at least
7 insofar as the meter tests that are shown on
8 Mr. Sherer's Exhibit 3.1 and 3.2 that the results of
9 those tests were within the standards required by
10 the Illinois Commerce Commission?

11 A. Under conditions that those meter test
12 results indicate -- I can't dispute them, but they
13 were tested in Commonwealth Edison Company's shop,
14 not in the field, not under the conditions that
15 existed before it was removed with possible shorts,
16 lost terminals, burnout CTS, so I don't know.

17 Q. Do you know whether the meter test process
18 that was applied by Com Ed as indicated in
19 Mr. Sherer's Exhibits 3.1 and 3.2 were in accordance
20 with the Commission rules?

21 A. After it was removed from the site, I assume
22 it was in accordance with the rules.

1 Q. Now looking at your rebuttal testimony at
2 Page 2, Line 37, you state that for nine months
3 Americana paid excess money due to Com Ed's meter
4 triple billing demand and usage. Do you see that in
5 your testimony?

6 A. Yes.

7 Q. Can you please explain what you mean by
8 triple billing of the demand and usage?

9 A. Confining it to Meter No. G250979 only is
10 the reference there where 15 years before that the
11 demand on that meter were between 60 and 110
12 kilowatts, and 13 years after that those nine months
13 the bills -- the demands on that meter were between
14 60 and 110 kilowatts, so those nine months were
15 triple the amount of logical historical average only
16 during those nine months. That's what I'm referring
17 to when I say that meter. I don't know if there
18 should be a plural meters, but that meter billed
19 Americana for three times the kilowatts and also
20 three times the kilowatthours during those nine
21 months only in a 35-year period.

22 Q. Can you point to me in your rebuttal

1 testimony what meter you are referring to when you
2 made the response for nine months Americana paid
3 excess money due to Com Ed's meter tripling billing
4 demand and usage. You didn't mention any specific
5 meter in your rebuttal testimony, did you?

6 MR. MUNSON: Do you have a cite?

7 MR. GOLDSTEIN: Yes, back on Page 2, Line 37,
8 approximately.

9 MR. MUNSON: Of the direct?

10 MR. GOLDSTEIN: Rebuttal.

11 THE WITNESS: Later on in the rebuttal testimony
12 it's referring specifically to that meter.

13 MR. GOLDSTEIN: Q. But it doesn't in that
14 particular line?

15 A. Not in this particular line, nor in the
16 other allegations are there no specific either.

17 Q. Now in response to my original question
18 along this line, you said that you reviewed 15 years
19 of billing previous to the billing in question. Did
20 you not mean there that you only reviewed 10 years
21 overbilling rather than 15?

22 A. Prior to?

1 Q. Prior to.

2 A. Well, I didn't review billings prior to
3 October 10, 1991.

4 Q. Okay. Now --

5 A. But the assumption is that if there were
6 billings there were -- they were triple billed prior
7 to that since the billing was -- it would have been
8 over 500 kilowatts and they would have been put on
9 6T. So the assumption is since they weren't on 6T
10 prior to that, that they were billed correctly.

11 Q. Now this triple billing of demand and usage
12 that you have been talking about, this is the
13 overbilling that is part of the complaint in this
14 matter, is it not?

15 A. Yes.

16 Q. And do you have any direct evidence that
17 there was overbilling for this 9-month period in
18 1993?

19 A. Only in comparison to the bills before them
20 and the bills after them.

21 Q. So you are assuming that for that 9-month
22 period you are merely looking at historical bills

1 and subsequent bills and saying, well, then for that
2 9-month period those bills had to be overbilled;
3 isn't that right?

4 A. That's not the only reason.

5 Q. What other reason do you have?

6 A. Talking with the building engineer, the
7 electrical contractor, knowing that in December of
8 24, 1992 until September 13, 1993 there was no load
9 added, no load removed from that meter or any other
10 meter of that account.

11 Q. Let me ask you this. Can you explain to us
12 what triple billing of demand and usage is?

13 A. Three times the normal logical historical
14 load that was billed before that or since then.

15 Q. And you have examined the bills during this
16 9-month period in 1993 to see if both usage and
17 demand went up during that 9-month period?

18 A. As I said before, the kilowatts of demand
19 and the kilowatthours on that meter were
20 approximately sometimes greater than three times and
21 sometimes less than three times the possible amount
22 of electricity that could have used on that

1 electrical meter.

2 Q. All right. And do you believe that it's Com
3 Ed's responsibility to figure out what is causing a
4 bill to be too high?

5 MR. MUNSON: Object.

6 THE WITNESS: I don't know if I have an opinion
7 about that.

8 MR. MUNSON: Withdraw the objection.

9 MR. GOLDSTEIN: Q. Do you think it's the
10 responsibility of a customer if the customer
11 believes the bill is too high to bring that to the
12 attention of Com Ed or does it work in the reverse?

13 A. I don't know if I have an opinion.

14 Q. Well, so you don't know if a customer
15 believes that a bill is too high whose job it is to
16 look into that high bill, correct? You don't know
17 whether it's Com Ed's or the customer?

18 A. Well, Com Ed knew about it first. Of
19 course, it's their responsibility to correct their
20 mistakes. It's the customer's responsibility to
21 inform Commonwealth Edison Company when they do
22 realize that there is a mistake.

1 Q. So when bills are presented to customers,
2 does -- do those bills show both energy and demand
3 usage?

4 A. They should.

5 Q. Do they?

6 A. They should.

7 Q. Okay. Does the bill also show what electric
8 rate a customer's only on?

9 A. They should.

10 Q. Do they?

11 A. They should. They should also show when a
12 bill is estimated.

13 Q. If a customer believes a bill is too high
14 and does not contact Com Ed, do you think Com Ed
15 would believe that the larger bill could be the
16 result of added load?

17 MR. MUNSON: Objection; calls for speculation.
18 He's asking --

19 MR. GOLDSTEIN: The problem is, Judge, he's not
20 answering the previous question really.

21 MR. MUNSON: He's asked what Com Ed thinks and
22 he's not in a position to know what Com Ed thinks.

1 It's a speculative question. It's improbable. I
2 object.

3 JUDGE GILBERT: I'll sustain it.

4 MR. GOLDSTEIN: Q. Based on your experience in
5 working at Com Edison, Mr. Shifrin, is it your
6 belief that Com Ed checks all the bills that go out
7 to see if they're too high?

8 A. I don't believe they do.

9 Q. Okay. Do you believe that a customer has
10 any responsibility in reviewing a bill to contact
11 Com Ed to ask whether the bill is too high?

12 A. When they become aware that the bill is too
13 high that they should be contacting Commonwealth
14 Edison Company?

15 Q. Yes? Is that your answer?

16 A. When they become aware of it, yes.

17 Q. Okay. Fine. Let's look at Page 16 of your
18 direct testimony at Lines 298 and 301 and Page 14 of
19 your rebuttal testimony at Lines 294 and 297, and
20 now in your rebuttal testimony you already admitted
21 that the bill in question from October 8, 1996 to
22 November 6, 1996 was corrected by Com Ed, correct?

1 the approximately \$11 -- 10,900 or something on the
2 missing bill which rendered that bill to not have
3 any money due.

4 Q. If Com Ed resolved those two missing bills,
5 do you think that it could be demonstrated that
6 various billing issues were resolved at the time
7 they occurred?

8 A. Well, only one issue was resolved on this
9 missing bill, on the bill for November 6, '96 to
10 December 9, '96.

11 Q. So is the answer yes or no?

12 A. To the question, I'm quote qualifying it, so
13 the answer is, well, if you --

14 Q. I don't mean you're qualifying. Answer yes
15 or no, then you can qualify.

16 Can you read the question.

17 (Question read by
18 reporter.)

19 A. If Com Ed resolved those two missing bills, I
20 don't understand the -- if Com Ed resolved --
21 provided those two missing bills, is that what you
22 are -- I'm confused. If Com Ed provided those two

1 missing bills --

2 Q. Yes.

3 A. -- not resolved those two missing bills?

4 Q. If those bills were --

5 A. Produced.

6 Q. -- produced, would Com Ed be able to resolve
7 other issues that were involved with various credits
8 that may or may not have been issued?

9 A. No.

10 Q. Let's go look at what I think is Exhibit 2.3
11 to your rebuttal testimony.

12 JUDGE GILBERT: While you are doing this, let's
13 take a couple minutes break.

14 (Whereupon, a break was
15 taken.)

16 Back on the record.

17 MR. GOLDSTEIN: Q. Let me see if we can -- I'm
18 now sort of confused. Mr. Shifrin, during the
19 course of this proceeding, we were provided a large
20 number of bills. Were those bills re-issued bills
21 by Com Ed in your opinion?

22 A. They were the bills that were issued by

1 Commonwealth Edison Company that Americana paid.

2 Q. Do you know if they were copies, or original
3 bills, or copies of reissued bills?

4 A. The latest most recent corrected bills.

5 Q. And, as I understand your testimony, if
6 Com Ed had all of the transcripts of all the bills
7 available to it, would it -- how do I put this --

8 (A brief pause.)

9 -- would it be possible for Com Ed to demonstrate
10 that many of the others bills were also corrected?

11 A. If the missing bills were provided --

12 Q. Yes.

13 A. -- only one missing bill now left missing,
14 and the answer is no.

15 Q. Which exhibit is this?

16 MR. MUNSON: Part of Exhibit 2.3.

17 MR. GOLDSTEIN: Q. Let's turn now to your
18 Rebuttal Exhibit 2.3 and specifically a letter dated
19 May 12, 1999, which was sent via Mr. Armetta to Com
20 Ed.

21 Do you have that in front of you,
22 Mr. Shifrin, or could that be provided?

1 A. I looked at it. I have a copy of it, yes.

2 Q. Does that letter and subsequent switch to

3 Rate 6 demonstrate that Mr. Armetta made a choice of

4 rates and Com Ed acted on his request to change

5 rates for the Americana account?

6 A. A year after the original request.

7 Q. So the answer is yes?

8 A. Did they act upon this letter?

9 Q. Yes, and change the rate.

10 A. Finally.

11 Q. Because the fact that Mr. Armetta requested

12 and received refunds from Com Ed for the 2-month

13 period in 1999 demonstrate that Mr. Armetta

14 recognized that Rate 6 was a more advantageous rate?

15 MR. MUNSON: Objection as to speculation as to

16 what Mr. Armetta was thinking.

17 MR. GOLDSTEIN: Q. Well, the problem is we don't

18 have him as a witness. You are aware there was a

19 refund given to Americana Towers subsequent to this

20 particular letter, are you not?

21 A. It was in the amount of \$3500. Is that what

22 you are referring to, approximately \$3500 for

1 Commonwealth Edison Company's guilty complex of not
2 responding and correcting this rate sooner? That
3 was because Commonwealth Edison didn't act in a
4 timely manner when they received Mr. Armetta's
5 letter dated May 12th.

6 Q. Now --

7 A. The rate wasn't changed until July 12th and
8 Commonwealth Edison Company said we'll refund you a
9 couple months of the difference between Rate 6T that
10 they paid and Rate 6, which is what was requested to
11 be done, and those two months were refunded of the
12 estimated charge that they shouldn't have had to
13 incur.

14 Q. And Mr. Armetta accepted those two months as
15 the appropriate amount of refund --

16 MR. MUNSON: Objection.

17 MR. GOLDSTEIN: Q -- - did he not, as I guess
18 Exhibit 2.3 further shows for recovered overcharges
19 due to being on the wrong rate during that
20 particular --

21 MR. MUNSON: Objection.

22 MR. GOLDSTEIN: -- being on the wrong rate; isn't

1 that right?

2 MR. MUNSON: Objection as to the compound
3 question and calls for speculation. Can you please
4 restate.

5 MR. GOLDSTEIN: Could you read the question back,
6 please.

7 (Question read by
8 reporter.)

9 JUDGE GILBERT: Well, I'm going going to sustain
10 the objection. I think you need to break it down.
11 I'm also not sure that Complainant's Exhibit 2.3
12 says anything with respect to actual refunds, simply
13 shows request for a change in service.

14 MR. GOLDSTEIN: Q. If you look at Exhibit 2.4, I
15 think it's 2.4, Mr. Shifrin, approximately got the
16 amount of refund, correct, \$3453.76? This was the
17 amount of money that was refunded to Americana
18 Towers, correct? And other than your additional
19 rhetoric with respect to the refund, it does
20 indicate that this is a settlement amount that was
21 agreed upon between Americana Towers and Com Ed for
22 recovered overcharges for being billed on the wrong

1 rate, correct?

2 MR. MUNSON: Objection. Objection, calls for
3 speculation. He cannot testify as to what is --
4 what is not a settlement amount. It's a legal term.
5 Mr. Shifrin is not a lawyer. It's not an
6 appropriate question.

7 MR. GOLDSTEIN: Settled amount is not a legal
8 term, Judge. It's whatever is reflected on the
9 exhibit. I guess it speaks for itself, but I would
10 ask that the witness be allowed to answer the
11 question.

12 JUDGE GILBERT: All right. I'm a bit lost as to
13 even what we are talking about, let alone to be able
14 to rule on the objection. What document was
15 Mr. Shifrin looking at at the moment you asked him a
16 question? You showed him a document.

17 MR. GOLDSTEIN: He should have been looking at
18 what I think is Exhibit 2.4.

19 MR. GOLDSTEIN: Keep in mind, none of these
20 exhibits were marked.

21 MR. MUNSON: I think that was information I
22 provided you in that supplemental data request. I

1 don't think that was part of -- that was part of the
2 exhibits.

3 MR. GOLDSTEIN: I'm sorry. Then it got mixed in
4 with his exhibits. If so, I apologize.

5 JUDGE GILBERT: Because what I have is
6 Complainant's Exhibit 2.4 is correspondence dated
7 January 24, 2003.

8 MR. MUNSON: That's correct.

9 JUDGE GILBERT: It doesn't sound like that's what
10 you are referring to, Mr. Goldstein.

11 MR. GOLDSTEIN: No. Let me mark this as
12 Respondent's Cross Exhibit 1.

13 (Whereupon, Respondent's
14 Cross (Commonwealth
15 Edison Company)
16 Exhibit No. 1 was
17 marked for
18 identification.)

19 MR. GOLDSTEIN: Q. Do you know where this
20 particular document came from which is marked as
21 Respondent's Exhibit 1?

22 A. I believe I provided that.

1 JUDGE GILBERT: Can we be clear about provided to
2 whom?

3 MR. GOLDSTEIN: This was part of what was
4 provided to us.

5 MR. GOLDSTEIN: Q. And in a subsequent response
6 to what data request do you recall or was it just
7 provided?

8 A. I don't know how it was provided to you, not
9 by -- when you asked, I originated this, that's what
10 I was testifying to. I did not provide that to you.

11 Q. Do you know who prepared that -- the
12 document?

13 A. I prepared it, yes. I might take back my
14 words of providing it to you because I don't
15 remember doing, but I did prepare it.

16 Q. And what was the source document or
17 documents for this particular Respondent's Cross
18 Exhibit 1?

19 A. Commonwealth Edison Company.

20 Q. Now did Mr. Armetta request -- do you know,
21 whether Mr. Armetta requested a refund for being
22 billed on what he contended was the wrong rate?

1 A. No.

2 Q. So Com Ed just issued a refund out of the
3 clear blue for no reason at all, correct?

4 A. No, there was a reason.

5 Q. What was that?

6 A. That is incorrect. The reason was that they
7 didn't respond and act in a timely manner to their
8 request including one year later after the original
9 request.

10 Q. Do you have any explanation as to why the
11 refund covers the 2-month period in 1999?

12 A. No. It should have covered eight years.

13 Q. And do you know why -- do you have any
14 explanation as to why -- do you know whether -- let
15 me rephrase that. Do you know whether Mr. Armetta
16 with respect to this being billed on the wrong rate
17 issue did not request a refund back to 1993?

18 MR. MUNSON: Objection. Again, calls for
19 speculation.

20 MR. GOLDSTEIN: I'm just asking whether he knows
21 why or not. It's not speculation.

22 MR. MUNSON: Exactly. He's why Mr. Armetta.

1 MR. GOLDSTEIN: Does he know why?

2 JUDGE GILBERT: He's asking if he knows if that's
3 the question.

4 MR. GOLDSTEIN: If he knows.

5 JUDGE GILBERT: I'll overrule the objection.

6 THE WITNESS: I assume it was because he wasn't
7 aware of Com Ed mistakes until 2003, in the latter
8 quarter of 2003 when I discovered and explained the
9 overcharges, so in 1999 he did not know that, nor
10 did I, nor did anybody else.

11 MR. GOLDSTEIN: Q. Now in looking at that
12 Exhibit, Respondent's Cross Exhibit 1, again,
13 Mr. Shifrin, at least from what you could see from
14 the exhibit, Mr. Armetta did request a refund for at
15 least two months in 1999; is that right?

16 A. I thought that question was asked and
17 answered and, no, I'm not saying that he didn't
18 request that.

19 Q. Let's turn to your rebuttal testimony on
20 Page 2 or on around Line 39 and you state that
21 Com Ed overbilled Americana by charging the wrong
22 rate, 6T versus 6; is that correct?

1 A. Yes.

2 Q. Can you explain your reasoning for saying
3 that Com Ed overbilled Americana by charging the
4 wrong rate?

5 A. Yes, I can. Back in December of 1992 on
6 Meter No. G250979, the demand in kilowatthours
7 tripled proportionately and ultimately caused the
8 entire Com Ed account to go very, very high and in
9 the month of May 13, '93 to June 14, '93, it went
10 over 500 kilowatts.

11 Q. Now --

12 A. I'm not through. So that's what caused the
13 Rate 6T billing, and because those demands were
14 incorrect, were not valid, there was no mechanical
15 or electrical equipment to substantiate it.
16 Americana Towers was billed over 500 kilowatts
17 automatically went onto Rate 6T after only one month
18 of billing over 500 kilowatts when the tariff calls
19 for three months of billing before they go over --
20 before they bill onto Rate 6T.

21 Q. Now you have used the term incorrect or
22 wrong rate throughout your direct and rebuttal

1 testimony.

2 A. Yes.

3 Q. Do you not mean that Americana Towers was
4 not billed under the most advantageous rate rather
5 than the wrong rate?

6 A. That is true that they were not billed under
7 the most advantageous rate and they were also billed
8 on the wrong rate.

9 Q. Do you think it's Com Ed's responsibility to
10 provide the most advantageous rate to its customers?

11 MR. MUNSON: Objection; calls for a legal
12 conclusion. That's contained in Com Ed's tariffs.

13 MR. GOLDSTEIN: That's -- I don't see where that
14 calls for any kind of legal conclusion.

15 JUDGE GILBERT: Well --

16 MR. GOLDSTEIN: He's a billing expert.

17 JUDGE GILBERT: Well, with the understanding that
18 you are asking him a question which I guess he could
19 interpret as moral and not a legal question if he
20 want to. I'll overrule the objection.

21 MR. MUNSON: You may answer.

22 THE WITNESS: Within some of the Illinois

1 Commerce Commission Public Utilities Acts, and I
2 don't have the numbers, it says that the customer
3 will receive the lowest cost electricity.

4 MR. GOLDSTEIN: Q. Are you aware that under
5 Com Ed's tariffs and conditions the company does not
6 guarantee that the rate provided to customers would
7 be the most advantageous?

8 A. Guarantee? Is that a correct word? I
9 don't know if I would answer that under the word
10 guarantee.

11 Q. That's from the tariff.

12 A. And when was that originated? Was it before
13 or after 1993?

14 Q. I don't have that, but are you saying that
15 in 1993 that was not the situation --

16 A. That's correct.

17 Q. -- with respect to Americana?

18 A. Yes.

19 Q. Does it make any difference if that
20 particular clause in the tariff went into effect in
21 May of '95?

22 A. The damage was already done two years

1 earlier and perpetuated itself for seven years.

2 Q. Now based upon your experience of working at
3 Com Ed, did you ever encounter any issues when
4 Com Ed needed to correct a customer's bill?

5 A. That did I ever encounter?

6 Q. Encounter.

7 A. Encounter any issue when Com Ed needed to
8 correct a customer's bill --

9 A. I would have to say yes.

10 Q. -- when you were in part someway of being in
11 that, correct, process being a liaison between the
12 company and --

13 A. Are you asking when I was with the company?

14 Q. Yes.

15 A. I thought you meant after I left the
16 company.

17 Q. No. No, during the time you were working.

18 A. During the time I was working with the
19 company did I ever encounter --

20 Q. Any situations where Com Ed needed to
21 correct the customer's bill?

22 A. I don't recall specifics. I can't -- I

1 handled customer inquiries about billings. If there
2 was a mistake, I had it corrected.

3 Q. Did you ever have a situation where Com Ed
4 corrected the same bill twice for two different
5 issues?

6 A. Not that I remember.

7 Q. Now you state that Com Ed settled the
8 billing disputes that occurred to the bills issued
9 over the summer of 1993 in your rebuttal testimony
10 and looking at the top of Page 12 alone Line 250 --

11 MR. MUNSON: Do you see the bottom -- top of Page
12 12?

13 THE WITNESS: The question is on the bottom of
14 Page 11, right?

15 MR. MUNSON: Oh, yes.

16 MR. GOLDSTEIN: Q. The question's on Page 11,
17 but response on top of Page 12.

18 A. And your question about that is what?

19 Q. In effect, you said that the -- that Com Ed
20 settled the billing dispute that occurred for bills
21 is over the Summer of 1993; is that right?

22 A. No, that's not what I said.

1 Q. What did you say?

2 A. Com Ed's settlement it's an issue that isn't
3 an issue with us. It's an issue of Commonwealth
4 Edison Company having automatically put Americana
5 onto Rate 6T prematurely and billing them without
6 time-of-day meters on time-of-day rate.

7 Q. Based upon your experience at Com Ed, are
8 you aware that Com Ed settles the entire bill
9 dispute when a settlement is done, not just one
10 portion of the bill?

11 A. If they knew about the other errors and
12 admitted it, they probably would. This was
13 obviously not corrected. It was not corrected.

14 MR. GOLDSTEIN: I'm going to strike that. I
15 didn't ask that part. He's answered the question.

16 JUDGE GILBERT: You are going to strike that?

17 MR. GOLDSTEIN: I ask that it be stricken. Thank
18 you. I'm trying to get to the end of this line of
19 questioning so we can break.

20 MR. GOLDSTEIN: Q. Mr. Shifrin, when a meter is
21 double punched, are the kilowatts and kilowatt-hours
22 doubled?

1 A. No.

2 JUDGE GILBERT: Could I ask at this -- at this
3 junction what does double punch mean? What do you
4 mean by that?

5 THE WITNESS: An accumulative demand meter the
6 demand portion of it is physically reset. There's
7 something -- I don't know. I call it something
8 sticking out -- and you take the tag off and you
9 read the demand dials of it and it's reset back to
10 zero.

11 Well, sometimes the meter reader doesn't
12 do it all the way, so he does it again and it's
13 double punched. It's not often, but it happens, and
14 that's what happened here. It's the next month
15 when it's read, it's double the amount that it would
16 have been if he only hit that -- physically reset
17 that one time. That was time-of-day meters and
18 physical reset of the meter isn't necessary but
19 cumulative demand meters they are --

20 MR. GOLDSTEIN: Q. With kilowatthours, correct,
21 registered on a double punch meter?

22 A. They could be if the --

1 Q. Are they?

2 A. I don't know. That's possible.

3 Q. Now so you describe how a double punch
4 occurs. Do you know how a triple punch would occur?

5 A. If there was a triple punch, it would
6 probably be a similar way.

7 Q. And who does what wrong to create either the
8 double punch or a triple punch and how does this
9 work into the overbilling that you have described in
10 your testimony?

11 A. Well, there's no claim here of being
12 triple-punch demand so -- on any meter at any time.

13 Q. Does a double punch like you described in
14 your testimony cause an increase in both the usage
15 and demand?

16 A. As I said before, when you ask that
17 question, not necessarily. The action on double
18 punching does not automatically double the
19 kilowatthours. It does double the kilowatts of
20 demand.

21 MR. GOLDSTEIN: I just have two or three
22 questions and I think it would be a good time to

1 break or if you want to keep going, that's fine,
2 too.

3 (Whereupon, a break
4 was taken.)

5 JUDGE GILBERT: Are you anticipating any
6 questions after the break?

7 MR. GOLDSTEIN: Yes.

8 JUDGE GILBERT: Okay. Ask two or three more.

9 MR. GOLDSTEIN: Q. Okay. Now you have had some
10 problems with the way Com Ed tested the meters as
11 demonstrated on Mr. Sherer's Exhibits 3.1 and 3.2.
12 How would you test the meter?

13 A. If I was working for Com Edison Company?

14 Q. Yes.

15 A. Exactly the way he did it.

16 Q. And so if you were an independent person say
17 working for a testing station operated by the City
18 of Chicago, how would you test the meter?

19 A. Well, hindsight perfect, but considering his
20 test results and the impossible non-historical load
21 on that meter for nine months only out of 35 years,
22 I would have, if I could have, tested it while it

1 was still in place before it was removed, knowing
2 that there was a major electrical fire in that
3 building that they were getting the switch back and
4 the current transformer could have been hot surges,
5 test in place under field conditions, not pristine
6 conditions. Perfect is not the right word, but
7 hindsight is.

8 MR. GOLDSTEIN: I think that's all that I have at
9 the moment. I do have another line of questioning
10 and, if you like, I'll go forward with it now or
11 wait until after the lunch.

12 MR. MUNSON: How long are you anticipating?

13 MR. GOLDSTEIN: About 10 or 15 minutes more.

14 JUDGE GILBERT: What time is it?

15 THE WITNESS: 1:27.

16 MR. GOLDSTEIN: Almost 1:30.

17 JUDGE GILBERT: I run the risk if you don't do
18 lunch, you have even more questions, so I like to
19 finish this now. I'm aware that energy is fading
20 and I'm sensing some inefficiency in our process at
21 this point. Let's try it and say 1:40. I think we
22 are going to consider breaking if you have not done.

1 MR. GOLDSTEIN: Just bear with me one second.

2 (A brief pause.)

3 Okay. I'm ready to begin. Hopefully

4 this is the last line of questions, Judge.

5 MR. GOLDSTEIN: Q. Mr. Shifrin, earlier we

6 discussed the various positions you held at Com Ed

7 and so some questions were asked about your work as

8 an electric billing consultant. Do you recall those

9 questions?

10 A. Yes.

11 Q. I like to ask you some additional questions

12 about your work as electric billing consultant, and,

13 in particular, I would like to find out about your

14 consulting work with a person named Joseph E.

15 Scallion. Do you know that person?

16 MR. MUNSON: Objection as to relevance.

17 MR. GOLDSTEIN: Well --

18 JUDGE GILBERT: We don't know that yet, so

19 overruled, see where it goes though.

20 Can you spell the name, please.

21 MR. GOLDSTEIN: S-c-a-l-l-i-o-n.

22 THE WITNESS: There is a question? I didn't hear

1 a question.

2 JUDGE GILBERT: Wasn't there a question?

3 MR. GOLDSTEIN: There was a question.

4 THE WITNESS: I'm waiting for a response.

5 MR. GOLDSTEIN: Q. When did you first become
6 associated with Mr. Scallion in the consulting
7 business?

8 A. If I recall thereabouts 1993.

9 Q. And you were partners with Mr. Scallion; is
10 that correct?

11 A. Not in my company, no.

12 Q. How would you describe your relationship
13 with Mr. Scallion?

14 A. He was a consultant also.

15 Q. And did not you and Mr. Scallion operate
16 under the name of Midwest Energy Consultants?

17 A. Yes.

18 Q. So you were partners?

19 A. Not with the company that I'm with now.

20 Q. Correct. I understand that. You are an
21 individual consultant now.

22 A. But not under that name. It's a different

1 company.

2 Q. And how long were you and Mr. Scallion
3 partners under the name of Midwest Energy
4 Consultants?

5 MR. MUNSON: Are we going somewhere here?

6 MR. GOLDSTEIN: Yes, give me a chance. Okay.

7 MR. GOLDSTEIN: Q. For how many years?

8 A. Three, four.

9 Q. Okay. And in the 1994 to 1995 time period,
10 which covers that three or four years, did you
11 provide electric billing consulting, too, with
12 Mr. Scallion to (proprietary information)?

13 MR. MUNSON: Objection. We covered this before.

14 MR. GOLDSTEIN: We haven't covered any of this
15 before.

16 MR. MUNSON: We covered this before. Let's go.
17 I request a side bar.

18 MR. GOLDSTEIN: This has nothing to do with his
19 employment at Com Ed, Judge.

20 MR. MUNSON: I'm not concerned what you think. I
21 like a side bar, Judge.

22 JUDGE GILBERT: Off the record.

1 (Off the record.)

2 Back on the record.

3 Mr. Munson had requested we go off the
4 record. I'm not actually sure there was an
5 objection posed. I think there was --

6 MR. GOLDSTEIN: I believe you might want to state
7 an objection, Counsel.

8 MR. MUNSON: Objection as to confidential and
9 privilege information. I move to strike any
10 reference to (proprietary information) from the
11 record in this proceeding.

12 MR. GOLDSTEIN: Judge, we have had a side bar
13 previously with respect to the settlement between
14 Mr. Shifrin and Com Ed with respect to his
15 employment. If this -- if the (proprietary
16 information) employment by Mr. Shifrin is part of
17 that settlement, I will go no further and ask no
18 other questions.

19 JUDGE GILBERT: All right. Well, it sounds like
20 we need a foundation for determining whether, in
21 fact, there's a connection between the settlement
22 agreement.

1 MR. GOLDSTEIN: I have no idea if that's correct,
2 but I have no other questions based upon counsel's
3 representation. We could ask Mr. Shifrin if that's
4 part of the settlement. I believe he's answered in
5 the side bar that it was part of the settlement.

6 JUDGE GILBERT: Let's have that part of the
7 record before I rule on the objection.

8 MR. GOLDSTEIN: Q. Was the (proprietary
9 information) part of the settlement --

10 A. Yes.

11 Q. As far as you can recall, Mr. Shifrin?

12 A. As I understand, all issues prior to the
13 settlement were in the settlement where -- I don't
14 know what the word is -- all previous issues were
15 wiped clean on both sides, including Commonwealth
16 Edison's side.

17 MR. GOLDSTEIN: I guess we have to ascertain
18 that, subject to check, Judge, but what I was going
19 to go into was an issue that related to
20 Mr. Shifrin's employment subsequent to his
21 employment with Com Ed and I will accept
22 Mr. Shifrin's representation. It's wiped clean. If

1 anything else to find out about it, I'll duly inform
2 you and we have to go from there.

3 JUDGE GILBERT: All right.

4 MR. GOLDSTEIN: I have no evidence that it was
5 part or was not part is what I'm really saying, but
6 I do know that the list of questioning I was going
7 to ask had nothing to do with Mr. Shifrin's
8 employment at Com Ed.

9 MR. MUNSON: That's beside the point. That issue
10 was tantamount in the case. Okay.

11 MR. GOLDSTEIN: I'm just saying that's --

12 MR. MUNSON: No. No. No. Let me finish. I'm
13 very serious here. This was actually part of the
14 settlement agreement. This was part of the release.
15 This was part of the agreement. This information
16 should not be discussed in open court on the record.
17 I renew my objection to strike it from the record
18 in this proceeding.

19 JUDGE GILBERT: All right. The question that
20 contained the name (proprietary information) should
21 be deleted from the record, that is struck or
22 stricken. I have never found out in my years which

1 I'm suppose to say. It's gone. I'm not going to go
2 so far as to say no reference to (proprietary
3 information) could be made in this proceeding,
4 because I don't know what the context. The word
5 (proprietary information) may arise, but within this
6 particular context and in this particular testimony,
7 let me state, there's another way, because there was
8 no testimony, there was objection, the question is
9 stricken.

10 MR. GOLDSTEIN: Okay.

11 JUDGE GILBERT: Anything else?

12 MR. GOLDSTEIN: That's all the questions that I
13 have.

14 JUDGE GILBERT: That completes all your
15 questioning at this point for cross, not talking
16 about recross. That's all your cross questions?

17 MR. GOLDSTEIN: Correct.

18 JUDGE GILBERT: So when we come back, we'll move
19 to redirect. Everyone understand that?

20 MR. GOLDSTEIN: Okay.

21 JUDGE GILBERT: All right.

22 MR. GOLDSTEIN: That's fine.

1 JUDGE GILBERT: I think I'm now suffering from
2 inefficiency that everyone else is. We'll come
3 back. It's now -- what is it about 1:40?

4 MR. MUNSON: 1:38.

5 JUDGE GILBERT: 1:38.

6 JUDGE GILBERT: How about 2:30? Can you all make
7 it back 2:30?

8 MR. MUNSON: Yes, Judge.

9 JUDGE GILBERT: I like you to be ready to go,
10 Mr. Munson, enjoy your lunch but spend time
11 preparing for redirect.

12 MR. MUNSON: I do believe if I push hard, I can
13 get through with their witness I believe. Whether
14 it's true or not --

15 MR. GOLDSTEIN: We'll contact Ms. Miller and have
16 her available at 2:30, I hope, if we could begin
17 with her.

18 MR. MUNSON: Redirect first, then Ms. Miller.

19 MR. GOLDSTEIN: If that's okay with you, Judge,
20 we like -- since she's due in Philadelphia, we like
21 to get her finished today if we could.

22 JUDGE GILBERT: So your other two witnesses are

1 currently present in the hearing room? You rather
2 move to Ms. Miller?

3 MR. GOLDSTEIN: Correct.

4 JUDGE GILBERT: She would be your first witness?

5 MR. GOLDSTEIN: Yes.

6 You have no objection?

7 MR. MUNSON: I have no objection to that.

8 JUDGE GILBERT: See you at 2:30.

9 (Whereupon, a lunch
10 recess was taken.)

11 Back on the record.

12 EXAMINATION

13 BY

14 JUDGE GILBERT:

15 Q. Mr. Shifrin, just real quick, before
16 Mr. Munson begins redirect, could you take a look at
17 Page 22 of your rebuttal and take a look at Line
18 481.

19 A. Yes.

20 Q. Do you see where you use the phrase "safety
21 factor" there on Line 481?

22 A. Yes.

1 Q. What did you mean by that?

2 A. It's a built-in safety, a built-in factor
3 they add to the nominal rating of whatever it is.
4 If it's a current transformer, a power transformer,
5 if it's manufacturer of a product, there's a safety
6 factor that they design it for a certain thing and
7 but they add another 10 percent to it, another 20
8 percent to it, so it can take a little more than its
9 rated capacity for short periods of time.

10 In this case, a current transformer, a
11 power transformer has a safety factor of a little
12 bit more than the rated capacity. If there's a
13 rating capacity of 300, it could take more than 300
14 for short periods of time. That's what I meant by
15 that.

16 Q. And when you say --

17 A. That's what he meant by that also in his
18 testimony.

19 Q. Okay. And immediately prior to that, when
20 you say conveniently adds, is it your position that
21 safety factor of 1.5 is unusual or greater than it
22 ought to be?

1 A. A safety factor should not even be included
2 in the designated rating of a current transformer or
3 of a power transformer. It's really you get the
4 load and you design it based on that load. It just
5 happens to be that it can take more than that, so
6 you don't design something with a safety factor in
7 there, otherwise, it's run at 150 percent of its
8 rated load. That's not how things are designed.

9 Q. Okay. I just wanted that clarified.

10 A. I don't know if I explained it properly.

11 Q. No, I just want to make sure --

12 MR. GOLDSTEIN: Judge --

13 JUDGE GILBERT: Please --

14 JUDGE GILBERT: Q -- one, that I understood what
15 you meant by safety factor and, two, is that I
16 understood your intention with the phrase
17 "conveniently adds." I understood there was a bit
18 sarcasm to that. I wanted to make sure I fully
19 understood.

20 THE WITNESS: No, it's not -- not in Rider 7's
21 current transformer sizing guide issues by
22 Commonwealth Edison Company. It's not included in

1 there and now he adds to it.

2 JUDGE GILBERT: I understand that. I just wanted
3 to make sure reading what you intended.

4 Mr. Goldstein.

5 MR. GOLDSTEIN: Let's go on with the redirect.

6 MR. MUNSON: Thank you.

7 REDIRECT EXAMINATION

8 BY

9 MR. MUNSON:

10 Q. Mr. Shifrin, you recall a series of
11 questions about your beginning your consulting
12 beginning with Americana when you stated that you
13 first started reviewing bills in 2003? Do you
14 recall that?

15 A. I think that's what I said, yes.

16 Q. But isn't it a fact that you meant late
17 2002, not 2003?

18 A. That might be my memory. I knew it was a
19 few months before we issued the first letter to
20 Commonwealth Edison Company, so that could be the
21 date. If we issued the letter in January of 2003,
22 then I -- -

1 Q. I'm handing you what's the formal complaint
2 if you could review No. 2 on the formal complaint,
3 and what that states, and read that for the court.

4 A. It states "We first had conclusive knowledge
5 of Commonwealth Edison's errors in 2002, then
6 requested a refund, notified the ICC on 7-2-04."
7 All right. I'll stand to be corrected.

8 Q. And you reviewed thousands of bills; is that
9 correct?

10 A. Many.

11 JUDGE GILBERT: Many thousands or many bills?

12 THE WITNESS: I'm sorry. I don't know if I'd
13 categorize it as thousands. I don't keep track, so
14 I would rather just say many rather than thousands.
15 I don't know how many there are.

16 MR. MUNSON: Q. Much has been made about the
17 missing bills, but let's make sure the record is
18 clear in your testimony regarding the missing bills
19 or why such bills are not relevant.

20 Can you just take us through that if
21 you don't mind.

22 A. The first missing bill was before the errors

1 forced Americana to go on right to Rate 6T, so that
2 is an irrelevant missing bill or that missing bill
3 is irrelevant. There was no credits issued on that
4 bill because there was no errors known to either
5 party at that time.

6 JUDGE GILBERT: What bill are you referring to,
7 Mr. Shifrin.

8 THE WITNESS: I'm sorry. That's 3-16-94 to
9 4-14-93, and the second missing bill is 9-12-94 to
10 10-11-94 and that remains a missing bill. The bill
11 of 9-12-94 was literally recreated using the bill
12 before it and the bill after it with Commonwealth
13 Edison Company's meter reading data to come out to
14 be exactly consumption of 163,029 kilowatt-hours and
15 that bill was paid in full by Americana with their
16 Check No. 101427 dated 10-20-94, Voucher No. 16106,
17 so there was no credits issued on that bill for
18 anything.

19 The third missing bill is for the
20 period of 11-16-96 to 12-9-96, which is still
21 missing but was recalculated recreated by
22 Commonwealth Edison Company and I am satisfied that

1 that missing bill included close to \$11,000 refund
2 for the prior month's outrageous demand of 738
3 kilowatts when it should have been 7.38, so even
4 though that's missing, there is a substituted
5 recalculated bill that takes its place, and the last
6 missing bill -- and I can't pinpoint the date -- was
7 not really quite missing because only Page 1 was
8 missing. We had provided Pages 2, 3, and 4 of that
9 bill which had the meter reading data. We
10 ultimately found I think a couple of months ago
11 Page 1 of that bill, provided it to Commonwealth
12 Edison Company, and it shows that there were no
13 credits issued for any reason on that bill.

14 MR. MUNSON: Q. The bill you're just talking
15 about is for service from March 12 '97 to April 10,
16 '97; is that correct?

17 A. From my spreadsheet, I can't verify that,
18 but if that's what's in my testimony, then it's
19 accurate.

20 Q. Mr. Shifrin, you recall questions
21 surrounding the nine billing months in question
22 where you were questioned about triple demand, and

1 meter while testing properly did not record or was
2 not billed properly? Do you recall those questions?

3 A. Yes.

4 Q. Are you still convinced that those months
5 were billed improperly be Com Ed?

6 A. Yes.

7 Q. And why is that improperly --

8 A. A number of reasons. First, 15 years before
9 that and 13 years after those -- that 9-month
10 period, the kilowatts of demand ranged between 60
11 and 110 kilowatts, approximately 60 kilowatts to
12 approximately 110 kilowatts; whereas, in those nine
13 months, it went up to almost 300 kilowatts, so
14 comparing historical, normal logical, that's one
15 reason.

16 The second reason is there wasn't the
17 equipment to have added to produce that load. That
18 is not -- it's a winter month when it first started,
19 so, obviously, they didn't have air conditioning on
20 -- air conditioning metered by -- excuse me -- by
21 meter -- original Meter W236 on the end of it.
22 That's the service that that air conditioning is

1 metered by. That is, of course, the other meter 235
2 -- I'm sorry -- that has seasonal ups and down.
3 Obviously, in summer, it goes up. In the winter, it
4 goes down, but Meter G250979 the service -- that
5 service did not have any additional mechanical or
6 electrical equipment added or taken off and also
7 it's too coincidental that on January 24, 1992,
8 Christmas Eve, there was a leak in the heating pipe
9 circulating around the building. It's only a
10 two-pipe system, so it can only circulate hot water
11 in the winter and cold water in the summer.

12 This was, of course, dead of winter. The
13 pipe broke. Water leaks down into the electrical
14 room onto the main electrical switch and exploded.
15 The main electrical switch explodes, a fire exudes
16 that was monumental. The whole building was out of
17 service. Over 400 residents were out of service,
18 and that was a major disaster that required
19 Commonwealth Edison Company, the police department,
20 the fire department, and electrical contractors to
21 temporarily get that building back in service.

22

1 Beginning that day, the demands on
2 kilowatthours tripled. The demand in kilowatthours
3 tripled and stayed three times -- instead of using
4 the word triple, it was three times their rational,
5 normal historical consumption for approximately nine
6 months, for a full nine billing periods, and it went
7 back down to its normal historical the day that
8 Commonwealth Edison Company exchanged that meter.

9 After they exchanged that meter, that
10 the -- the bill load of kilowatts on that meter and
11 the kilowatthours on that meter went down to a
12 third, back down to 70 kilowatts, 80 kilowatts, a
13 hundred kilowatts, but not 300, so nobody adds
14 equipment for nine months and takes it off. It was
15 illogical.

16 It's not there was no precedent set. If
17 there was load added, it would have continued
18 sometime in the next 13 years, which didn't happen
19 on that meter, and then the -- if I'm numbering them
20 right -- the fourth -- I don't know how many reasons
21 I had so far, but the next reason is that the month
22 from 5-13-93 to 6-14-93 and the next two months

1 after that, the demand on that meter were billed at
2 243.6 in the first month, 243.6 in the second of
3 those three months, and 243.6 in the third of those
4 three months, which is included in the 9-month
5 billing period in question.

6 I can't say that it's impossible, but
7 it's improbably unlikely. It's never happened on
8 any meter anywhere on here ever before. Even
9 billing for the exact same two that decimal point
10 for two months in a row didn't happen. That was not
11 marked as estimated on the billings, another
12 violation -- What is that of -- Illinois 83280.80,
13 where you have to designate that they're estimated,
14 also, it says that you can estimate more than -- you
15 have to read it every other month. You can't
16 estimate more than one month unless there's certain
17 conditions unless you put down that it's estimated.

18 For those reasons, to summarize the
19 answer, I do not believe that any of those billings
20 were correct, even near correct, and because of
21 that, because of those incorrect billings of three
22 times the demand because kilowatthours don't affect

1 the total demand but kilowatts do and those demands
2 increased the entire billing demand for the entire
3 account to over 500 which is when they automatically
4 went onto Rate 6T after only one month instead of
5 being billed for three months and on the fourth
6 month going on to 6T which is another violation.

7 It's in the tariff. It's in a message on
8 one of the bills. It says that that you go onto
9 Rate 6T after reaching 500 kilowatts three times it
10 says that you have reached it once and that month
11 they went on it, on 6T, which means that if that was
12 the -- -

13 MR. GOLDSTEIN: Judge, I don't mean to interrupt,
14 but now this is just a regurgitation of
15 Mr. Shifrin's direct and rebuttal testimony. It's
16 in the record. The testimony's been admitted and
17 for him to continuously restate what he's already
18 stated, I don't think it adds anything to the
19 record, but it's being gone on and on and on, and I
20 just have one question in response to it.

21 JUDGE GILBERT: Well, the one thing I guess I
22 disagree with you say you don't mean to interrupt

1 because clearly you do.

2 MR. GOLDSTEIN: I know.

3 JUDGE GILBERT: No, I think that's fair,
4 Mr. Goldstein. I think we are receiving something
5 in the nature of oral argument here and I think the
6 information is in the record, so let's move on to
7 the next question.

8 MR. MUNSON: Q. Mr. Shifrin, you provided Com Ed
9 all the bills that you had in your possession or
10 that were in the file; is that correct?

11 A. Yes.

12 Q. You did not withhold any information from
13 Com Ed?

14 A. No.

15 Q. You stated that 15 years prior that this
16 meter had demands of 60 kw to a hundred kw. How do
17 you know that?

18 JUDGE GILBERT: Could we define which meter are
19 you talking?

20 MR. MUNSON: Meter ending in 979.

21 JUDGE GILBERT: And 15 years prior to what?

22 MR. MUNSON: Q. To the jump up, to 15 years

1 prior to 12-12-92 to 1-13-93, which you said in your
2 soliloquy that 15 years prior the demand did not
3 reach these levels. How do you know that to be
4 true?

5 A. I think that's around the year that they
6 converted to condominiums and, if that was true, the
7 demand would have reached over 500 kilowatts prior
8 to that date and they would have been on Rate 6T
9 long before then.

10 MR. MUNSON: I have nothing further, Judge.

11 JUDGE GILBERT: Okay. Recross.

12 MR. GOLDSTEIN: I have just one question.

13 RECROSS EXAMINATION

14 BY

15 MR. GOLDSTEIN:

16 Q. Mr. Shifrin, you have been asked questions
17 about billing improperly and discussed several
18 reasons why you believe Com Ed billed Americana
19 improperly for nine months in question in 1993, and
20 if you recall in my cross-examination of you, I
21 asked you whether you had any direct evidence that
22 Com Ed was billing improperly for that nine months.

1 Do you recall that question?

2 A. Not specifically, but I won't say --

3 Q. All the points --

4 A. -- you didn't ask it.

5 Q. All the points you raise in, as Mr. Munson
6 described, your soliliquy, those are all, would you
7 agree with me, all based upon your speculation as to
8 what occurred during that 9-month period in 1993;
9 isn't that right?

10 A. It was Commonwealth Edison Company that made
11 the suggestions of what the reasons were that those
12 demands and kilowatthours tripled, and I'll be
13 specific if you want.

14 MR. GOLDSTEIN: Nothing else.

15 JUDGE GILBERT: I'm going to ask a question which
16 may justify each of you having one more opportunity
17 with Mr. Shifrin within the scope of what I'm going
18 to ask.

19 EXAMINATION

20 BY

21 JUDGE GILBERT:

22 Q. Both parties have made reference to the fire

1 at Americana's premises in December of '92. I don't
2 believe you have directly said, but I think you have
3 implied, that one of the consequences of that fire
4 may have been to affect performance of Meter No. 79.
5 Is that a correct understanding of what you said so
6 far?

7 A. I can't directly say that, because I can't
8 refute the meter test results, but I can only say
9 that it's too coincidental that that's when the
10 demand tripled, and it's too coincidental. When the
11 meter was exchanged, the demand went down to a
12 third, back to normal.

13 The two scenarios from the beginning of
14 nine months to the end of those nine months, a major
15 catastrophe happened, demand tripled, the current
16 transformer could have been overheated when you get
17 a spike in electrical switches, motion, who knows
18 what could happen to the metering, to the current
19 transformer, to the shorting out of the internal
20 wiring, to the terminals that aren't tighten
21 properly, and when that meter's removed and tested
22 under other conditions, other than the field

1 conditions, it possibly could test fine, but it
2 might not have been recording accurately while it
3 was installed under those negative conditions. It's
4 improbable, but I cannot say that I know that it --
5 that meter wasn't recording properly.

6 JUDGE GILBERT: Within the scope of that, please.

7 MR. MUNSON: Yes.

8 REDIRECT EXAMINATION

9 BY

10 MR. MUNSON:

11 Q. But you are stating fire you are stating
12 that the fire that occurred on or around Christmas
13 1992 affected the billing determinant for at least
14 Meter 99; is that correct?

15 A. Yes, that's correct.

16 MR. GOLDSTEIN: Let's take the last question
17 first, Judge, if I may.

18 RECROSS EXAMINATION

19 BY

20 MR. GOLDSTEIN:

21 Q. What direct evidence do you have that the
22 fire caused a problem with the billing determinant,

1 that is what is registered through that 979 meter.

2 MR. MUNSON: Objection as to use of the word

3 "direct." That's a vague term.

4 MR. GOLDSTEIN: Q. What evidence do you have?

5 MR. MUNSON: Foundation.

6 MR. GOLDSTEIN: Q. What actual evidence do you
7 have that, besides your speculation, as to what the
8 effect of the fire was on the billing determinant?

9 A. Because it excludes all the reasons that
10 Commonwealth Edison Company gave me, which was they
11 added odds (sic), they transferred odds (sic), and
12 there were welders on that service. Those were the
13 three reasons that Commonwealth Edison Company gave
14 to me that was the reasons for the additional
15 electric load.

16 Q. Who gave you those?

17 A. Mr. David Gerrity.

18 Q. Well, we can ask him that question I guess
19 somewhere along the lines.

20 Mr. Shifrin, you have physically examined
21 the location of the CT panels and the meters that
22 serve Americana Towers?

1 MR. MUNSON: Objection; beyond the scope.

2 MR. GOLDSTEIN: It's not beyond the scope. He's
3 talking about, you know, what the effect of the fire
4 was and I'm trying to determine where everything is
5 located to see if it was actually true.

6 JUDGE GILBERT: Well, Mr. Munson has a point. To
7 be within the scope, you are going to have to go
8 back to 1992.

9 MR. GOLDSTEIN: Q. Well, you don't know where
10 the meter -- do you know where the meters and CT
11 panels were located in 1992?

12 A. I wasn't there in 1992.

13 Q. Do you know whether the CT panels and the
14 meters were all in the same location?

15 A. I don't know that Commonwealth Edison
16 Company has possession of the current transformers
17 and the meter reading.

18 Q. The current transformers and the metering
19 are they in the same location?

20 MR. MUNSON: Objection; we are getting far afield
21 here, beyond the scope.

22 JUDGE GILBERT: That's all right. Go ahead.

1 MR. GOLDSTEIN: Q. Are they in the same
2 location, Mr. Shifrin?

3 A. All the meters and all of the current
4 transformers --

5 Q. Yes.

6 A. -- or each respective transformer and each
7 respective meter are the CT panels and the meters in
8 the same location today?

9 JUDGE GILBERT: As they were in 1992.

10 MR. GOLDSTEIN: Q. And then as they were in
11 1992.

12 A. Well, all of the meters I don't think are in
13 the same locations, so the answer is no to that, and
14 if they're in the same location, in 1992 I wouldn't
15 know that. I don't know if I'm understanding your
16 question, maybe the answer is current transformers
17 are in the same location as its respective meter.

18 Q. And just one last question. Based upon the
19 evidence that you reviewed and I assume the report
20 made by Mr. Rollins, which is somewhat the basis for
21 some of your speculation regarding what actually
22 happened, did you find any evidence that the meters

1 serving Americana Towers, any of them, were actually
2 damaged in the fire?

3 A. I didn't look, but the electrician did.
4 They repair them. They replace them switches. They
5 were there for 24 hours.

6 Q. Meters were replaced at the time of the
7 fire?

8 A. I didn't mean the meter, but electric
9 equipment that exploded.

10 Q. But I asked you about a meters, didn't I?

11 A. I don't know if meters were replaced. I
12 don't know if the CTs were replaced. They could
13 have been.

14 MR. GOLDSTEIN: All right. All right. I have
15 nothing further.

16 MR. MUNSON: Judge --

17 JUDGE GILBERT: No, done.

18 Moving to admit your cross exhibits.

19 MR. GOLDSTEIN: Yes. We'll have to withdraw it
20 and provide copies. We did not make copies over the
21 lunch period. Hopefully we can do that later today,
22 Judge, and provide them to you and the parties.

1 JUDGE GILBERT: Mr. Munson, objection?

2 MR. MUNSON: Oh. No. No.

3 JUDGE GILBERT: All right. Commonwealth Edison

4 Cross Exhibit 1.0 is admitted.

5 (Whereupon, Complainant's

6 (Commonwealth Edison

7 Company) Cross Exhibit

8 No. 1.0 were marked for

9 identification and

10 received in evidence.)

11 Okay. Mr. Shifrin, that's it. Thank

12 you very much.

13 THE WITNESS: Thank you.

14 JUDGE GILBERT: Mr. Munson, does that conclude

15 the complainant's evidentiary case?

16 MR. MUNSON: Yes, your Honor, and move to admit.

17 Do we need to admit all the exhibits?

18 JUDGE GILBERT: No, it's done.

19 MR. MUNSON: Yes.

20 MR. GOLDSTEIN: Ms. Miller has not been sworn,

21 Judge.

22 JUDGE GILBERT: Okay. Ms. Miller, let me swear

1 you in.

2 (Witness sworn.)

3 Thank you.

4 Mr. Goldstein.

5 MR. GOLDSTEIN: Thank you. I call Lynn Miller,
6 Judge.

7 (Whereupon, Com Ed
8 Exhibit No. 2.0, 2.1
9 & 2.2 were marked for
10 identification.)

11 LYNN MILLER,
12 called as a witness herein, having been first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY

16 MR. GOLDSTEIN:

17 Q. Ms. Miller, would you state your name for
18 the record and tell us by whom you are employed and
19 in what capacity?

20 A. My name is Lynn Miller. I'm a billing
21 analyst for Exelon, which encompasses work for both
22 Com Ed and PECO, which is the utility in

1 Pennsylvania.

2 Q. Let me hand you what's been marked as Com Ed
3 Exhibit 2.0. It's a cover page and four pages of
4 questions and answers. Is this the rebuttal
5 testimony you wish to give in this proceeding?

6 A. Yes.

7 Q. And if I were to ask you the questions that
8 are set forth on those four pages, four pages of
9 rebuttal testimony, would your answers to those
10 questions be the same?

11 A. Yes.

12 Q. Let me hand you what's been marked as Com Ed
13 Exhibit 2.1 --

14 A. I do have them.

15 Q. -- which is a three-page exhibit. Could you
16 describe what that exhibit is?

17 A. That's a terminal transaction register.
18 It's what we refer to as TRR. Any transactions
19 entered into the terminal in our CIS billing system,
20 Customer Information System, back prior to 1998, is
21 recorded on the TTR.

22 Q. And is this TTR part of the book as a record

1 of Commonwealth Edison Company?

2 A. Yes, it is.

3 Q. And is it kept in the ordinary course of

4 Commonwealth Edison's business?

5 A. Yes, it is.

6 Q. Let me show you what's been marked as Com Ed

7 Exhibit 2.2. It's a document entitled "Americana

8 Towers Condominium (settlement) Inc.," and so forth,

9 with the address.

10 A. I have that.

11 Q. What is the source of this particular

12 document consisting of two pages?

13 A. This is a spreadsheet developed -- that I

14 developed from the information on the TTR --

15 Q. And this spreadsheet?

16 A. -- and from other sources.

17 Q. You developed this yourself?

18 A. Yes.

19 MR. GOLDSTEIN: Okay. I have nothing else for

20 the witness. I would move admission of Respondent's

21 Exhibits 2.0, 2.1, and 2.2.

22 JUDGE GILBERT: Is there any objection?

1 MR. MUNSON: No objection, Judge.

2 JUDGE GILBERT: All right. Commonwealth Edison
3 2.0, 2.1, and 2.2 are admitted. Ready for cross
4 examination.

5 (Whereupon, Com Ed
6 Exhibit Nos. 2.0, 2.1,
7 and 2.2 were received
8 in evidence.)

9 MR. MUNSON: Your Honor, I renew my motion in
10 limine that I ask that witnesses be excluded through
11 my cross-examination of Com Ed witnesses.

12 JUDGE GILBERT: All right. Do you have an
13 estimate? I'm not going to hold you to it. I just
14 want to get a sense of it of how much time you may
15 need with Ms. Miller.

16 MR. MUNSON: Twenty minutes to a half hour.

17 JUDGE GILBERT: Okay. Response to the motion in
18 limine?

19 MR. GOLDSTEIN: I don't -- you want to exclude
20 both witnesses, Mr. Gerrity (phonetic) and
21 Mr. Sherer (phonetic).

22 MR. MUNSON: Yes.

1 MR. GOLDSTEIN: That's fine with me.

2 JUDGE GILBERT: Okay. Motion granted.

3 Mr. Munson is estimating 20 minutes to a half hour,
4 so I think between now and that amount of time you
5 are free to do as you wish.

6 (Witnesses left the
7 room.)

8 MR. MUNSON: Judge, may I approach?

9 JUDGE GILBERT: (Nodding head.)

10 MR. MUNSON: This is what I'm handing the
11 witness, Counsel, is Exhibit 1.1 of Mr. Shifrin's
12 testimony. It's just laid out in provides a good
13 basis for discussion of this account. Instead of
14 being six separate pages, we put it -- taped it
15 altogether. It's just for demonstrative purposes.
16 You don't have to use it. It's in evidence, but I
17 just think it might be useful for our discussion.

18 CROSS EXAMINATION

19 BY

20 MR. MUNSON:

21 Q. Ms. Miller, you reviewed the bills

22 Mr. Shifrin provided to Com Ed; is that correct?

1 A. Yes.

2 Q. Let's start at the back of your testimony
3 and work forward. I'm referring generally to Page 4
4 of your testimony. It's true that Com Ed made a
5 mistake with regard to billing Americana Towers by
6 billing all the kilowatthours as on-peak -- as
7 on-peak kilowatthours, correct?

8 A. We billed them all on-peak kilowatthours.

9 Q. And that's a mistake; is that right?

10 A. No, because you can bill peak kilowatthours
11 under rate 6T tariffs -- time-and-use tariff. If it
12 does not have time-of-use billing, the tariff does
13 allow for that.

14 Q. But you refunded money to Americana Towers
15 as a result of this, I term, mistake. You term it
16 --

17 A. Billing differential.

18 Q. Billing differential?

19 A. Yes, because normally because customers on a
20 time-of-use rate will have at least one time-of-use
21 meter in place, and when they were billed under rate
22 6T, they did not, so they just had cumulative demand

1 meters which did not record a peak-and-off-peak bill
2 and we allowed the energy to be split peak and of
3 split retroactively on those bills.

4 Q. Right. So with 6T time-of-use meter to
5 register on/off-peak is a standard medium -- sorry
6 -- the standard metering type for Rate 6T customers;
7 is that correct?

8 A. For most of the meters, not always all the
9 meters, no. Rate 6T can have a combination of meter
10 types, but typically it has the majority of load on
11 a time-of-use meter, yes.

12 Q. And, in fact, at least currently, if a load
13 is over 400 kw, you, Com Ed, requires interval
14 meters being installed?

15 A. Only if they plan to go with an alternate
16 third-party supplier other than Exelon, other than
17 Com Ed.

18 Q. But to get back to the point, you provided a
19 credit to Americana Towers to rectify the
20 on/off-peak dichotomy?

21 A. Yes.

22 Q. Is that correct?

1 You did not provide a credit to account
2 for the substantial increases in demand in usage
3 that we are claiming here; is that correct?

4 A. No. The demand was registered on the meters
5 and when we present -- when we view a bill
6 adjustment, okay, if a customer inquires about their
7 bill, says their bill's too high, whatever, we don't
8 say, okay, what don't you like about the bill.
9 We'll fix that part. We take a look at the bill,
10 how it's billed, why it's billed, what it's billed
11 for, and we take a look at the bill inclusively and
12 adjust the bill correctly or differently for what
13 the customer concern was, because a lot of times
14 customers will say, oh, there was too many
15 kilowatthours when, indeed, it's the right number of
16 kilowatthours, it was just a peak and off-peak
17 split, or they'll say the demand was too high when
18 it wasn't too high a demand. It was a found
19 difference on the reading. We look at the bill all
20 inclusively, and if it needs to be debited
21 somewhere, we would do that, too.

22 Q. But that's in your sole discretion; is that

1 correct?

2 A. In Com Ed's business process that we have,
3 yes.

4 Q. And encompasses by the process?

5 A. Yes.

6 Q. But let me make sure the -- interesting
7 discussion. Let's make sure you answered my
8 question. You did not provide a credit for what
9 we're claiming in this proceeding with that bill
10 adjustment for the on/off-peak differential; isn't
11 that true?

12 A. I don't know if an adjustment was credited
13 for the demand. I don't have our papers. What I do
14 see in here is a bill print that gives a credit for
15 the the peak and off-peak split and the demand was
16 left the same on those calculations. I don't know
17 if a credit was given at any other time for that
18 demand.

19 Q. But a credit was provided to the customer
20 in May of 1994; is that correct?

21 A. Yes. I didn't see the bill with that credit
22 on that. I don't know the amount of credit. I know

1 that there were adjustment calculations in May of
2 '94.

3 Q. Fortunately, I have the bill --

4 A. Oh, okay.

5 Q. -- so you'll be able to see it shortly if I
6 could find it.

7 Help me out, Marshall. Pull out
8 the bills, will you.

9 (A brief pause.)

10 Bill was credited the billing months I
11 have for service from 5-12-94 to 6-13-94 or when
12 they have it from April 13 '94 to May 12, '94. I
13 believe it went from May of 9- -- May to October of
14 '93, and that was the bill print calculations were
15 in the March, April, May period of '94. I don't
16 remember without having the bills in front of me.

17 Q. Okay. Let me provide this to you.

18 (Document tendered.)

19 I'll provide a copy in a second.

20 MR. GOLDSTEIN: I don't worry about it. I trust
21 you.

22 MR. MUNSON: I'm so sorry, Judge. I didn't ask

1 permission, but I provided the witness with copies
2 of bills from May 1994 -- from April to May of '94
3 and for service from May of June of '94, and I ask
4 that the witness review those bills so I can ask
5 questions.

6 THE WITNESS: (Witness reviewed document.)

7 MR. MUNSON: Q. Can you tell me where the credit
8 is provided from Com Ed on those bills?

9 A. One second.

10 Q. Got a chance to review those?

11 A. Yes. I see that we gave a late payment
12 credit on the account. I don't see that the bills
13 -- the bill itself was not changed. I don't see a
14 change to the bill. I see that a late payment
15 credit was cancelled and a credit was applied. I
16 don't see an adjustment to the bill though.

17 JUDGE GILBERT: Let me stop before you go any
18 further. Mr. Munson, were these two bills that you
19 have provided to the witness and provided to me
20 already in our records somewhere else?

21 MR. MUNSON: No. May I mark them as --

22 JUDGE GILBERT: Yes, we need to identify

1 these.

2 MR. MUNSON: All right. I provided the witness
3 two billings of four pages a piece from April the
4 1st -- from April -- firstst 13, 1994 and to May 12
5 of 1994, four-page bill, and the second from May 12
6 of '94 to June 13 of '94. I was unclear which one
7 Ms. Miller was referring to on Line 81 of her
8 testimony when credit was then applied in May of
9 1994 bill period.

10 THE WITNESS: The one ending May 12 '94. I refer
11 to the bill, I refer to the end date. It's just --

12 JUDGE GILBERT: Okay. Before we go any further,
13 the bill for service from May 13 '94 to -- I'm sorry
14 -- for service from April 13 '94 to May 12, '94 is
15 Americana Cross Exhibit 1.

16 (Whereupon, Complainant's
17 (Americana Towers)
18 Exhibits Cross 1 & 2 were
19 marked for
20 identification.)

21 THE WITNESS: Okay.

22 JUDGE GILBERT: The bill for service from May 12

1 '94 to June 13, '94 is Americana Cross -- Cross

2 Exhibit 2 --

3 THE WITNESS: Okay.

4 JUDGE GILBERT: -- if you are keeping score.

5 THE WITNESS: Then Exhibit 1 shows a credit for

6 8562.32, which is cancellation of late payment

7 charges.

8 MR. MUNSON: Q. And speaking to the on/off-peak

9 split that you provided credit for, you don't see

10 that anywhere on these bills, do you?

11 A. No, I don't. From the terminal transaction

12 register, that would have mostly like been applied

13 in the March billing.

14 Q. March or do you mean July?

15 A. Do you have a March bill, the one -- I mean,

16 the one from March to April?

17 Q. I do or Marshall does, but --

18 A. The previous --

19 Q. So --

20 A. Because a rebilling, depending upon the

21 method that a biller uses to rebill an account in

22 the old system, it can show up as a lower previous

1 balance on the bill, not necessarily a separate line
2 item. That would come with a cover sheet that was
3 submitted with recalculated bills and that previous
4 balance could be lower.

5 Q. I understand it is helpful, but please wait
6 for a question before responding. Thanks.

7

8 (Whereupon, Complainant's
9 Cross (Americana Towers)
10 Exhibit No. 3 was marked
11 for identification.)

12 MR. MUNSON: I'm going to mark March 14 '94 to
13 April 13, '94 bill as Cross Exhibit 3 and tender it
14 to the witness, and I only have one.

15 MR. MUNSON: Q. Can you tell me whether any
16 credit was provided on that bill?

17 A. There was no separate adjustment line on
18 this bill, nor on Exhibits 1 and 2, except for the
19 late payment charges, but, like I said, when we do
20 an adustment, you can cancel and rebill or you can
21 give an adjustment credit, which, as we call them,
22 bill prints there are adjustment sheets that's

1 given to the customer with a summary cover sheet
2 showing the amount of the credit, and then what
3 happens is the previous balance on the subsequent
4 bill is reduced by the amount of that adjustment
5 credit.

6 Q. Okay. But, again, the credit is for the --

7 A. Peak-and-off-peak split.

8 Q. Yes. And you understand what I mean when I
9 say the peak-and-off-peak split means that a
10 customer was billed through cumulative meter where
11 you couldn't tell when they used it and you bill all
12 those kilowatthours on on-peak and then when a
13 time-and-use meter was put in or at least estimated
14 time-of-use, you split the on-and-the-off-peak
15 consistent with some Com Ed process or formula; is
16 that correct?

17 A. Yes.

18 Q. And that credit, to your knowledge,
19 Americana never claimed in its complaint or in
20 testimony provided by Mr. Shifrin; isn't that
21 correct?

22 A. They have never what? They never claimed

1 it?

2 Q. In the current complaint or in Mr. Shifrin's
3 testimony.

4 A. He hasn't -- rephrase that. Who hasn't?

5 Q. That --

6 A. He hasn't denied getting that money or --

7 Q. No, the amount of money that was credited
8 or disputed with the on/off-peak split, that
9 issue was never claimed in the current claim
10 complaint?

11 A. Oh, it's not part of this current claim?

12 Q. Right. You agree with that, right?

13 A. I don't remember a hundred percent. I
14 don't believe the peak-and-off-peak split was an
15 issue that I reviewed in detail for this. I was
16 more involved with his claim, that the demand and
17 the energy were double or triple what they should
18 be.

19 Q. Okay. Is it true that Com Ed's suppose to
20 assess late payment charges for disputed amounts?

21 A. I'm not in regulatory. That would be in the
22 credit side of the house. I'm in the billing side

1 of the house.

2 Q. Fair enough. But you do understand, and I
3 think you do, that at least with regard to this
4 meter, our issue is with kilowatts and kilowatthours
5 registering three times their normal historical size
6 and usage; isn't that correct?

7 A. Yes.

8 Q. Now this discrepancy, the demand and usage
9 tripling, if I can use that term, was not corrected
10 in any of the cross exhibits that you have in front
11 of you; isn't that true?

12 A. Correct.

13 Q. Now --

14 A. That --

15 Q. -- can I refer you to Exhibit -- your
16 Exhibit 2.2.

17 A. Yes.

18 Q. And in your direct you stated that you
19 developed this spreadsheet from the TTR and from
20 other sources; isn't that correct?

21 A. Yes.

22 Q. And can you tell me what those other sources

1 were?

2 A. Well, from the bills submitted by
3 Mr. Shifrin for one --

4 Q. Okay.

5 A. -- and mostly from the entries into the
6 terminal transaction register.

7 Q. I want to make sure I understand this.

8 At the bottom of the first page of your
9 Exhibit 2.2 you list three things. You say bill
10 missing. Do you see where it says that?

11 A. Yes.

12 Q. And you calculated the March to April 1993
13 missing bill, did you not?

14 A. Yes.

15 Q. And your calculation was slightly different
16 from Mr. Shifrin; isn't that correct?

17 A. Yes.

18 Q. And you worked to calculate that the demand
19 worked back from June through August readings and in
20 billing; isn't that true?

21 A. Off the bills and off the TTR.

22 Q. Fair enough, but the bill is March to April

1 bill and you utilized summer readings; isn't that
2 correct?

3 A. Working back from the June to August, but
4 you can work back in-between the two. There's still
5 a starting point and ending point.

6 Q. Okay. But the March and April are not
7 considered summer months.

8 A. Under Com Ed's tariffs, no, they're not.

9 Q. And so you utilized part of your -- you
10 utilized the TTR, Mr. Shifrin's billing, to
11 calculate that; isn't that true?

12 A. The TTR and the bills.

13 Q. And the bills to be specific?

14 A. Yes, but when you say that June and August
15 readings were used working backwards to March --

16 MR. MUNSON: I object.

17 THE WITNESS: Okay.

18 MR. MUNSON: Q. But actually --

19 A. I guess --

20 Q. Please. Please.

21 A. I just want to clarify that question.

22 Q. Please. Please.

1 A. When you say using summer readings to
2 calculate back into March to April and May bills,
3 okay, it's the readings that were used, not the
4 usage. You don't take summer usage and calculate.
5 You can take readings and back end into it between
6 March and July.

7 Q. Yes and, no, I appreciate that. I was just
8 -- I didn't know that. I was just reading your
9 exhibit from what you printed there. That's why I
10 came to my conclusion.

11 JUDGE GILBERT: Stop for a minute. What's the
12 difference between readings and usage?

13 THE WITNESS: The difference would be the
14 odometer reading on your car opposed to how many
15 miles in your trip. You know, if you are -- you can
16 take it 800 miles from Chicago to Philadelphia,
17 okay. If you know there's 800 miles and you can
18 back into it by taking a reading when you are in
19 Cleveland, taking a reading when you are in
20 Chesterton, that doesn't mean that the distance
21 between Chicago and Chesterton is the same as
22 Cleveland and Philadelphia, but you can use those

1 readings to see where you came back to to figure
2 out what the usage was in-between those sections of
3 the trip, so the trip may have been longer from
4 Cleveland to Philadelphia and it may have been
5 shorter between Chicago and Chesterton, but, at the
6 end of the day, it's still 800 miles between Chicago
7 and Philly. I don't know if that helps.

8 JUDGE GILBERT: I understood the part about
9 Chicago and Philadelphia. I don't understand about
10 between readings and usage.

11 THE WITNESS: If we take -- has anybody found on
12 a Cue (sic) meter yet?

13 When a meter reader reads the meter,
14 the demand meter it doesn't continue spinning or
15 circulating during the month. It stays right where
16 you left it at, just like the odometer reading in a
17 car. It's just sitting there like your car's in the
18 garage, okay, then that reading that he left it at
19 last month when he read the meter is what he should
20 find it at this month, so that's the found and the
21 left of the meter read, then he goes to the meter.
22 He reads it and verifies that it's the same on his

1 car. It's the same as where he left it at last
2 month.

3 If it's not, he writes down what he
4 finds it at. It's called a found/left difference,
5 so what he found it at is not what he left it at
6 last month, so that means it was activated at some
7 point in time since he was last there, so he writes
8 down the found to that meter that he's standing in
9 front of, and then he depresses the plunger and the
10 meter will spine forward and record the highest
11 30-minute demand that's in memory on that meter over
12 the last month, okay, and he reads it again, so the
13 difference between what he finds it at and what he
14 leaves it at is the amount of demand which came out
15 of memory and advance that meter reading.

16 If he punches it again, it's not going to
17 do anything. It's not going to go anywhere, because
18 there's no more memory in it. The first time he
19 punch it, it clears the memory. He have to wait
20 another -- until the next 30-minute interval is over
21 before any demand would register into that meter
22 again so he can punch it once, two, three times.

1 It's not going anywhere.

2 What he records is his found when he's
3 standing there in front of that meter, and what he
4 records is his left is the high demand that came out
5 of memory from that account.

6 Two things have to occur for a double or
7 triple punch to happen on a meter. Well, double
8 punch is a -- now I'm going too far.

9 JUDGE GILBERT: Now I realize you are responding
10 to some other part of the complainant's case and I
11 thought that you were explaining to me the
12 difference between usage and reading.

13 THE WITNESS: So taking the readings from that
14 what he found it at when he walked up to it, opposed
15 to what he left it at, that could be summer usage.
16 But taking what he found it at opposed to what he
17 left it at last month, will be the spring usage. So
18 I'm using -- I'm backing into the readings what he
19 left it at and what he found it at.

20 Had it been activated in-between his
21 trips, there is a different usage. I'm taking the
22 usage based off of the found and left off of the

1 reading. I don't say, well, here the August usage
2 I'm just going to apply it to the May bill.

3 MR. MUNSON: Judge, I think I can actually clear
4 this up.

5 MR. MUNSON: Q. I think I understand what
6 you are saying, and, if I may, what you are
7 basically saying you recalculated a missing bill,
8 correct?

9 A. Well, off of the TTR, off of the meter
10 reader telling me the found and left.

11 Q. Right.

12 MR. MUNSON: I would like to mark for
13 identification Cross Exhibit 4, which is three bills
14 beginning February 11, 1993 through 3-16-93 is the
15 first one. The second bill is Mr. Shifrin's
16 estimate of what that bill is between March 16, 1993
17 and April 14, 1993, and the third page is the bill
18 from April 14, 1993 to May 13, 1993, so there's
19 three bills in Cross Exhibit 4.

20

21

22

1 (Whereupon, Complainant's
2 Cross (Americana Towers)
3 Exhibit No. 4 was
4 marked for
5 identification.)

6 JUDGE GILBERT: Is it two bills and one
7 calculation?

8 MR. MUNSON: That's correct. That is correct.
9 The middle one is the calculation.

10 MR. GOLDSTEIN: We'll make copies somewhere along
11 the line.

12 MR. MUNSON: Q. So you see the three, the Cross
13 Exhibit 4 that I handed you, correct?

14 A. I'm sorry?

15 Q. You have in front of you --

16 A. Yes.

17 Q. -- Cross Exhibit 4.

18 Now you show a slight discrepancy from
19 Mr. Shifrin's estimate of the bill March 16, '93 to
20 April 14, 1993, isn't that correct, in Exhibit 2.2?

21 A. What dates are you looking at?

22 Q. Sorry. If you're looking at the bottom of

1 Exhibit 2.2.

2 A. Okay.

3 JUDGE GILBERT: Page 1?

4 MR. MUNSON: Page 1 there's one, two, three --

5 the bottom of the spreadsheet it says bill missing

6 (sic) Mr. Shifrin, et cetera, 102.9. Your estimate

7 was 101.4, No 2. Do you see that?

8 A. Yes.

9 Q. So you are --

10 A. 1.5 kw difference.

11 Q. Yes.

12 Q. Now if you refer to Mr. Shifrin's

13 recalculation, the middle page of Cross Exhibit 4 --

14 A. Okay.

15 Q. -- and please also review the

16 before-and-after bills and look at the Page 3 of

17 Cross Exhibit 4, the bill that was issued May 17,

18 1993, do you have that?

19 A. Okay. May 18 you mean -- I mean -- sorry.

20 Yes.

21 Q. The Page 3 -- I'm sorry. Cross Exhibit 4?

22 A. Yes.

1 Q. The May bill?

2 A. Yes.

3 Q. Okay. Now in the boxes down by the usage
4 profile, it shows month billed and it shows May, and
5 then the previous month, and then the May a year
6 ago.

7 Do you see that?

8 A. Yes.

9 Q. And now you look at total demand of April
10 1993. You see the total demand 374.8?

11 A. Oh, on his, okay, on Page 2?

12 Q. Yes. And then the average daily
13 kilowatthours for April of 1993 are 6,660. Do you
14 see that --

15 A. Yes.

16 Q. -- in that little box?

17 A. Yes.

18 Q. Okay. Now look at Page 2 of Cross Exhibit
19 4, which is Mr. Shifrin's recalculation of that
20 bill --

21 A. Yes.

22 Q. -- and you see that he took the -- at the

1 bottom of the page he took the average
2 kilowatthours, pursuant to that bill, multiplied by
3 number of days the number of billing months and came
4 up total kilowatthours? Do you see that?

5 A. Okay.

6 Q. And then he took -- up above he took a
7 present and previous reading on the March and the
8 April bills, came up with a differential, and came
9 up with almost the same number or kilowatthours
10 193,141?

11 A. Yes.

12 Q. Okay. So you think that that calculation
13 Mr. Shifrin provided was a reasonable recalculation
14 of the missing bill?

15 A. Yes.

16 Q. And it's possible to recalculate missing
17 bills, is it not, using the past and the using of
18 previous and post-bill dates and billing
19 determinates; isn't that correct?

20 A. Yes. What's not possible to see if
21 there were any adjustments on the bill that's
22 missing.

1 Q. But you are not claiming that credit was
2 provided on this missing bill, are you?

3 A. I'm not claiming that a credit's provided on
4 any particular missing bill. That's all I'm saying
5 that I can't tell if there was or was not.

6 Q. But you are not claiming a credit was
7 provided on the March 16, 1993 to April 14, '93
8 bill; isn't that correct?

9 A. I didn't look at the previous balance and
10 where the credit would be. Dave Gerrity checked the
11 previous balances from bill to bill to bill, and I
12 believe that was in his testimony.

13 Q. You, yourself, are not claiming that credit,
14 correct?

15 A. No.

16 Q. Now when you take the difference between the
17 present reading, minus the previous reading, you
18 multiply by 60, what is this number 60 on the
19 bills?

20 A. It -- depending on the size of the current
21 transformer, for instance, on your house meter one
22 kilowatthour is one revolution of meter. On a

1 larger business, the meter would spin too fast and
2 it would burn up, so they put transformers in there
3 which for every case some of these meters for every
4 60 kilowatthours that really are used there's only
5 one unit measured on the meter. There's only one
6 tick of the meter that goes by, so for every unit
7 measured on a meter, you multiply that out by 60
8 because it -- the ratio is only one to 60 of the
9 turn of the meter to the kilowatthours used by the
10 customer.

11 Q. If a meter is functioning properly but the
12 multiplier is off, the bill is wrong; isn't that
13 correct?

14 A. That's true, but these multipliers are not
15 off on these meters.

16 JUDGE GILBERT: Before we go further, where is
17 the 60 that you were asking about, Mr. Munson, and
18 you were responding to, Ms. Miller?

19 MR. MUNSON: If you look at any of the bills,
20 pick one, of Cross Exhibit 4 --

21 JUDGE GILBERT: Oh. I'm sorry. I thought we
22 were on 2.2.

1 THE WITNESS: It's the constant under the meter
2 information. It will show the constant for each
3 meter. Some of them they were registering larger
4 load and had 120-to-1 ratio, some of them had
5 6-to-1 ratio, and three of them were smaller
6 meters.

7 JUDGE GILBERT: And those are reflected --
8 actually on your Exhibit 2.2 you have the same
9 constant there as well.

10 THE WITNESS: Yes, up at the top.

11 JUDGE GILBERT: Go ahead.

12 MR. MUNSON: Q. Let's move on. Mark this as
13 Complainant's Cross Exhibit 5, the bill from
14 Americana from Com Ed for service from May 13, 1993
15 to June 14, 1993. This is another four-page bill,
16 (Whereupon, Complainant's
17 Cross (Americana Towers)
18 Exhibit No. 5 was marked
19 for identification.)

20 MR. MUNSON: Q. And what is -- let me ask it
21 this way. This is Cross Exhibit 5, and on Page 2,
22 Cross Exhibit 5, this basically states that

1 time-of-day charges apply when monthly demand
2 exceeds 500 kw in three months -- in the preceding
3 12-month period; is that correct?

4 A. Yes.

5 Q. And this month -- this particular month was
6 the first month where Americana has exceeded 500 kw;
7 isn't that correct?

8 A. Yes, but that's not the only reason we put
9 an account on Rate 6T.

10 Q. I'm not sure that that was my question.

11 A. All right.

12 Q. This was the first month to be clear that
13 Americana exceeded 500 kw in total bill demand?

14 A. But I don't have -- this is Americana. I
15 have this as a new customer, Sudler Nagy, bill and
16 their IBS system, our industrial system --

17 Q. That's fine.

18 A. Okay. So --

19 Q. But it's the first time they're on Rate 6T
20 the bill?

21 A. This customer's on 6T, yes.

22 Q. Do you have 6-14.

1 JUDGE GILBERT: Mr. Munson, was your Cross
2 Exhibit 5 in the record anywhere else?

3 MR. MUNSON: I don't believe so.

4 MR. GOLDSTEIN: No.

5 JUDGE GILBERT: Okay.

6 (Whereupon, Complainant's
7 Cross (Americana Towers)
8 Exhibit 6 was marked
9 for identification.)

10 MR. MUNSON: Q. Cross Exhibit 6 is a bill -- two
11 bills actually. One is a bill print if I can say it
12 like that.

13 A. Bill PRT.

14 Q. Bill PRT.

15 A. That's what -- it's an abbreviation for bill
16 print. It's an adjustment form.

17 Q. And a standard electric service bill from
18 Com Ed, date is October 6, 1993, for service from
19 June 14, '93 to July 14, '93. I only have one of
20 these.

21 MR. PARISE I do.

22 MR. MUNSON: You have the bill print and the

1 other there's two bills for this particular --

2 MR. PARISE: I may not.

3 MR. MUNSON: Well, I'll get you a copy.

4 THE WITNESS: I don't think you do have a bill

5 print.

6 MR. PARISE: Possibly.

7 MR. GOLDSTEIN: You are going to provide this to

8 the witness?

9 MR. MUNSON: Yes, sorry. Cross Exhibit 6; is that

10 right?

11 JUDGE GILBERT: Yes.

12 MR. MUNSON: Q. And the cross exhibit consists

13 of bills from June 14, '93 to July 14, '93. One is

14 a regular bill. One is a revised bill print; is

15 that correct.

16 A. Right.

17 Q. Now if you review those, isn't it correct

18 that kilowatts on -- total kilowatts on each print

19 bill in the kilowatthours are the same in total, the

20 difference is that you rebilled 572.4kw and 294653

21 at peak which Com Ed rebills with on/off-peak split

22 found on the bill print?

1 A. Yes.

2 Q. The kilowatthours are the same. Difference

3 is the split, right?

4 A. Yes.

5 Q. Now you would agree that this billing

6 month, May 13, 1993 through June 14, 1993, Com Ed

7 billed Americana Rate 6T for the first time,

8 correct?

9 A. Correct.

10 Q. This month was the second month in 12 that

11 customer reached 500 kw or greater, correct?

12 A. For this premises, yes.

13 Q. For any premises for the Americana Towers?

14 A. But it's a different customer.

15 Q. Understand.

16 A. If I can explain, we bill this account

17 through September in CIS in our old system, which

18 does not handle time-of-use meters. We bill the

19 customer from May to September in our old system.

20 Okay. There were orders issued to the field to have

21 the meters exchanged for time-of-use meters and

22 there was orders issued to our industrial billing

1 clerks to move the account from our small commercial
2 CIS system over to our large and industrial IBS
3 system.

4 Okay. There was also information in
5 that time period that the name -- that the customer
6 is Sudler Nagy, not Sudler Marling. All right, so
7 the delay in processing the transfers over from CIS
8 to IBS, the billing clerk in IBS is sitting here now
9 in the month of October. They see the usage for
10 May, June, July, August, September. They see this
11 usage and they have a request to put a new customer
12 on service.

13 Q. Could I ask a question? Who's seeing this
14 usage?

15 A. The billing clerk, the billing clerk who had
16 this bill --

17 Q. Did they estimate --

18 A. -- to bill.

19 Q. Did they estimate those bills between any of
20 the bills between December 1992 through September
21 13, 1993?

22 A. Yes, we had -- we didn't have a June

1 reading, so they estimated the June demand the same
2 as the July demand, which wasn't an actual found
3 left reported difference.

4 Q. And the May, June, and July demand were all
5 estimated, correct? If I -- just to help you out,
6 you looked at exhibit -- the bill spreadsheet I
7 showed you might go.

8 A. May was not estimated. July is not
9 estimated. July is actual readings off of the
10 meter. It's a found left difference that the reader
11 reported on the TTR. They estimated the June to
12 match the July not having a June reading.

13 Q. Okay. But you did not provide an estimate
14 on that June billing; isn't that correct?

15 A. No, they didn't.

16 Q. And you are suppose to in accordance with
17 your tariff; is that correct?

18 A. Yes. I would say when the billing clerk
19 punched in the reading, they forgot to put an "E" at
20 the end.

21 Q. Did the billing clerk ever visit or
22 inspect Americana's site to determine the type of

1 usage they had and estimate the percentage of
2 off-peak?

3 A. No. This was not a billing for
4 peak-and-off-peak usage. This was a billing for
5 kilowatthours and demand in June under Rate 6 and in
6 July having four months of usage on a new customer
7 knowing they're over 500 kw put them on Rate 6T,
8 which Com Ed can do if a new customer -- we see that
9 the load is going to go over 500 kw, we put them on
10 6T and then bill them forward.

11 Q. Isn't Com Ed's practice to have an account
12 manager estimate past usage?

13 A. No.

14 Q. It's not?

15 A. No. That was way back. Well, they haven't
16 done it in billing since I can remember, since the
17 80s. I remember in the 80s the sales rep and the
18 marketing rep would, of course, I probably was
19 eleven when this occurred, but the sales rep and the
20 marketing rep would mock up an industrial bill and
21 estimate usage for the industrial billers, but we
22 centralized the billing departments and also that

1 work came over into the IBS billing department and
2 the billing department estimates usage.

3 If there's an adjustment to be done, we
4 may get information from the marketing -- from the
5 ESO rep. They're called energy reps there that --
6 that call now to find out information that we need
7 for the adjustment, but there isn't an adjustment.
8 This was taking the readings out of the CIS system,
9 setting a new -- setting the customer in IBS under a
10 new name and billing them forward based on readings
11 that we had.

12 Q. But the facility existed before this became
13 a new customer and there was lots of data in order
14 to estimate from prior to this period of time; isn't
15 that correct?

16 A. Yes, an actual July reading was one thing we
17 estimated from the June bill.

18 (A brief pause.)

19 Q. What period did Com Ed install a
20 time-and-use meter?

21 A. That was in -- that was the September to
22 October time period of '93. Sorry.

1 Q. The billing date September 13, '93 to
2 October 12, 1993?

3 A. Yes. We put it in 9-16-93.

4 Q. And the demand for that particular meter
5 registered 70.8kw for that billing month; isn't that
6 correct?

7 A. You mean for October? Let me check October.

8 (A brief pause.)

9 Yes.

10 Q. May I have a second?

11 JUDGE GILBERT: (Nodded head.)

12 MR. MUNSON: Q. You would agree with me, would
13 you not, that since the inception of electric
14 service at this facility the account has always been
15 Americana Towers Condominium Association?

16 A. No. I had Sudler Marling on as the name of
17 the customer in CIS and I had Sudler Nagy as the
18 name of the customer in IBS and it didn't change
19 until Americana Towers recently in our new system,
20 and the reason I know it's Americana Towers is
21 because of my involvement in this -- in this
22 hearing.

1 Q. But those Sudlers were agents of the
2 customer, not the customer itself, not the legal
3 entity required to pay the bills; is that correct?

4 A. I didn't even know that. I didn't --

5 MR. GOLDSTEIN: It may be a little bit outside of
6 her knowledge, Counsel.

7 THE WITNESS: I have a name. I have a customer
8 name on a bill and the customer's name on the bill
9 and I know it's all Americana Towers because I got
10 involved in this hearing.

11 MR. MUNSON: I move to admit Complainant's Cross
12 Exhibits 1 through 6 into the record.

13 MR. MUNSON: Okay. Objection?

14 MR. GOLDSTEIN: No objection.

15 JUDGE GILBERT: Americana Cross Exhibits 1, 2, 3,
16 4, 5, and 6 are admitted.

17 (Whereupon, Americana
18 Cross Exhibit Nos. 1, 2,
19 3, 4, 5, & 6 was admitted
20 into evidence.)

21 I note I only have one copy of
22 everything, but 3 -- and I don't have any copies of

1 3 at all.

2 MR. GOLDSTEIN: Well, can we make sure we get all
3 copies of all six --

4 MR. MUNSON: Yes.

5 MR. GOLDSTEIN: -- Mr. Munson, at some point in
6 time?

7 THE WITNESS: Here's 3.

8 MR. GOLDSTEIN: I'm not sure I have them all.

9 MR. MUNSON: No. I want to make sure we all
10 agree that's what they are.

11 MR. GOLDSTEIN: Exactly.

12 JUDGE GILBERT: I have one question.

13 EXAMINATION

14 BY

15 JUDGE GILBERT:

16 Q. Ms. Miller, with respect to a new customer,
17 as you understand it, how many months of demand in
18 excess of 500 kilowatts would be required before you
19 could put that new customer on Rate 6T?

20 A. None. If we estimate their load to be over
21 500 before they even bill the building, we put them
22 on 6T. If we anticipate their load being over a

1 thousand, if the billing clerk is sitting here in
2 the month of October seeing four months' worth of
3 usage over 500, they're going to put that customer
4 on 6T the first time. They realize that usage is
5 going to stay over 500.

6 I know we first transferred them onto
7 Rate 6 when we put them over into IBS. I don't
8 know. I wasn't the billing clerk. I supervise
9 them, but I would imagine knowing that system we
10 just moved it from Rate 6 in CIS over to Rate 6 in
11 IBS.

12 You have to let the meter sit down and
13 you have to let that bill once, and you can only
14 produce one bill per workday, so then they take out
15 the readings that they have going forward and all of
16 this is over 500, they would have changed it to Rate
17 6T and moved forward, might have 333 have noticed
18 over 500 before they put it on IBS and their first
19 bill may have been on 6T, yes, but it wasn't.

20 I would have preferred at that point in
21 time when they were billing that they had forced a
22 peak-and-off-peak split, then if they were going to

1 put them on 6T, that would have been more -- I don't
2 know, just would have been better. I would have
3 preferred them to force a peak-and-off-peak split
4 then, but they're sitting here with hindsight in
5 October seeing this customer usage and it's a new
6 customer name they're going to put them on 6T right
7 from the beginning.

8 Q. All right. Americana Cross Exhibit 5, Page
9 2, this is the bill covering service from May 13 to
10 June 14 of '93, and I believe Mr. Munson pointed out
11 it does contain this language with this electric
12 bill. You reach 500 kilowatt level once, and this
13 is a bill for Sudler Nagy, so was Sudler Nagy at
14 this point regarded as a new customer or the
15 previous customer?

16 A. This isn't a new customer, but this
17 customer's on Rate 6, but nobody put this message on
18 bills. It wasn't programmed into our system that if
19 you have any customer on Rate 6 that bills over 500
20 kw this message goes onto the bill.

21 Q. The system is programmed to do this after
22 they exceed 500 kilowatts, or is it reached 500, or

1 exceed 500 exceed?

2 A. Exceeds 500.

3 Q. After they exceed 500 once and the system
4 was programmed to send that message to this new
5 customer?

6 A. Yes.

7 Q. You told me that you could have billed a new
8 customer on 6T immediately without any prior usage,
9 too, so why did send the message at all?

10 A. Because the girl setting the account down on
11 IBS on Rate 6 and the system doesn't know this is a
12 new customer. This is the first IBS bill. It could
13 have been on 6T. That's the analysis that the girl
14 does. The system is programmed to -- you have Rate
15 6, you have over 500kw, you put this messages on.
16 That's it.

17 Q. All right. And, as you understand it, at
18 the time or around the time that this message was
19 received by the then customer, Sudler Nagy, was that
20 customer also placed on Rate 6T?

21 A. They were placed on 6T for July billing,
22 yes.

1 Q. Even though there's only been one month of
2 usage exceeding 500 -- not usage, demand exceeding
3 500kw?

4 A. Yes, because they were put on Rate 6T,
5 because they could see four months of bills that
6 this customer was over 500, so they were put on Rate
7 6T.

8 Q. But this message only says that you, the
9 customer, have reached this once. It doesn't say
10 four months.

11 A. That's because it was the -- you are right.
12 If she had put them on 6T, when she put them into
13 the IBS system, this message wouldn't have occurred
14 and this message will print it on the CIS bills in
15 June, July, August, and September, too, so this
16 account's billed over 500 kw in the CIS system all
17 the way through to September.

18 Q. Right. And that I understood.

19 A. And I don't have those bills to show you
20 that they have the same message on those bills, too.

21 Q. You would tell them three consecutive times
22 that they exceed 500 kilowatts of demand once would

1 tell them three?

2 A. No. The first time it comes out, it says
3 once.

4 Q. And the second would say twice, and third --

5 A. Yes.

6 Q. -- third would say three times?

7 A. Yes.

8 Q. By the way, was this bill that I'm looking
9 at generated through IBS or CIS?

10 A. IBS.

11 Q. The part I'm not understanding then if you
12 have -- why if you are notifying the customer in
13 three executive months about the level of demand in
14 order to warn them, I think that -- well, let's not
15 say warn -- to advise them that they have an
16 opportunity to be switched over to 6T or that they
17 may be involuntarily switched over to 6T, why are
18 you telling them that if you are going to switch
19 them before they reach the third month of demand in
20 excess of 500 kw?

21 A. I guess we are telling them because it's
22 programmed into the system to print on any Rate 6

1 bills and IBS doesn't have memory of what was billed
2 in CIS. They're totally two different systems, and
3 so had the billing clerk put them on 6T in IBS right
4 from the get-go, they would not have received this
5 message. Okay. They wouldn't have received this
6 message. The message is there. Well, the billing
7 clerk wouldn't even have seen this message. They
8 would put them on Rate 6T and the system message
9 wouldn't print and they would just be on 6T, because
10 the billing clerk put them on Rate 6 in IBS first,
11 this message is printed out because of the system
12 doesn't know the history of CIS and the billing
13 clerk doesn't see this message. They would be
14 looking at the usage and then deciding, oh, we
15 should have put this right on Rate 6T, didn't do it
16 for the first bill. I'll change it now and we'll go
17 forward. I guess the billing clerk doesn't see the
18 printed bill. They see the usage that they have in
19 front of them.

20 Q. And the billing clerk in this particular
21 instance, rather than talking generically, is aware
22 or believes -- I should say it that way -- the

1 billing clerk in this particular instance believes
2 that Sudler Nagy is a new customer at that point?

3 A. Yes. They had information in the TTR. They
4 have information that they were calling -- the
5 customer was calling in to have Sudler Nagy put on
6 service.

7 Q. Okay. And, hopefully, this is the last
8 piece of information I need to ask. When the
9 billing clerk does that, the billing clerk does have
10 actual demand readings or estimates to refer to that
11 are not in the name of this new customer that are in
12 the name of the previous customer, correct?

13 A. For this account, they did because they were
14 seeing in October seeing -- well, the customer calls
15 in in June to have Sudler Nagy put on service, so
16 October -- they get a call in June putting Sudler
17 Nagy on service.

18 Okay. They see the billing for June,
19 July, August, September. They're all over 500.
20 They're going to put them on Rate 6T. The only
21 thing I can speculate, and because I wasn't the
22 biller myself, is the call for Sudler Nagy came in

1 on June 25th. This bill was for service up to June
2 14th. The biller technically should have still had
3 this first Rate 6 bill under the name of Sudler
4 Marling on Rate 6. I could see that a biller would
5 just put them under the name of Nagy right from the
6 beginning and if switched them to 6T for the new
7 customer that called in on June 25th. That is
8 speculation on why they went to 6T on July and not
9 June 14th, but the call came in on June 25th for the
10 new name.

11 Q. Okay. As you understand the regulation
12 under which you operate, can an existing customer be
13 moved in 6 to 6T involuntarily without exceeding 500
14 kw and demand for three months?

15 A. No. We would wait for three months.

16 Q. But a new customer, as you understand the
17 regulations under which you operate, can be placed
18 on 6T?

19 A. From the get-go.

20 Q. All right. Thanks.

21 Thank you, Mr. Goldstein and Mr. Perise
22 for this very colorful copy of Exhibit 2.2.

1 MR. PARISE: Thank Peter.

2 MR. MUNSON: Do you have a color one?

3 MR. GOLDSTEIN: Would you like -- I guess we
4 could provide that.

5 THE WITNESS: You can have this one. I don't
6 care. Do you -- if you want a color one, we'll give
7 you a color one.

8 JUDGE GILBERT: Mr. Munson, I'm guessing -- I'm
9 sorry, Mr. Munson. Why am I saying that.

10 Mr. Goldstein, I'm guessing you have some
11 redirect?

12 MR. GOLDSTEIN: But he's better looking than I
13 am.

14 JUDGE GILBERT: Are you ready to go or do you
15 want a little break?

16 MR. GOLDSTEIN: I want a short recess.

17 JUDGE GILBERT: Sure.

18 (Whereupon, a recess was
19 taken.)

20 Okay. I think we're ready to go.

21 Let's go back on the record for redirect if any.

22

1 REDIRECT EXAMINATION

2 BY

3 MR. GOLDSTEIN:

4 Q. Let me start with the easiest part first,
5 Ms. Miller. There was some discussion about the
6 varying names on the account for the property
7 located at 1636 North Wells. You understand that
8 that's the Americana Towers Condominium Association,
9 do you not?

10 A. Yes. I do now, yes.

11 Q. And the account names that are on the bills
12 that are part of this record so far are Sudler
13 Marling and Sudler Nagy. Were those the account
14 holders as far as Com Ed was concerned with respect
15 to those time periods that were involved in those
16 bills?

17 A. Yes. I mean, we have a name on service and
18 that is the customer I deal with, and unless a
19 customer identifies themselves as that customer, I
20 wouldn't deal with them until we get information
21 from either the customer calling in and tells us who
22 calls to change a name, then I deal with that

1 customer.

2 Q. And now you subsequently found out that the
3 account for 1636 North Wells is now in the name of
4 Americana Towers Condominium Association; is that
5 right?

6 A. Yes.

7 Q. All right. Let me show you what
8 unfortunately we only have one copy of a series of
9 bills and statements beginning with September 13,
10 '93 to October 12, '93 and it goes all the way
11 through to --

12 MR. MUNSON: Let me write this down.

13 MR. GOLDSTEIN: July to August of '94.

14 MR. MUNSON: Okay.

15 (Whereupon, Respondent's
16 Group (Commonwealth
17 Edison Company)
18 Exhibit No. 4 was
19 marked for
20 identification.)

21 MR. GOLDSTEIN: Q. All right. Let me show you
22 what I have had marked as Respondent's Exhibit 4.

1 It's a group exhibit consisting of eleven different
2 parts. Unfortunately, I don't have enough copies.

3 A. I can walk up there if you want to look at
4 it with me.

5 JUDGE GILBERT: That's all right.

6 MR. GOLDSTEIN: Q. Let me show you what is shown
7 as Americana -- it's entitled Americana Towers
8 9-13-93 to 10-12-93 and it says this is the
9 corrected bill.

10 Could you describe to me what is shown
11 on this particular Exhibit 4(a) consisting of
12 several pages.

13 A. This is a bill print, otherwise we call it
14 an adjustment sheet, and when we do an adjustment,
15 there's two ways to process an adjustment. We can
16 -- it's the high one that you gave us, Marshall.

17 MR. SHIFRIN: What's the billing period?

18 THE WITNESS: 9-13 to 10-12 of '93. It's the
19 bill PRT, the bill print. There's basically two
20 ways that we do an adjustment. We can totally
21 cancel the bills in the system and rebill them,
22 which the result would be a new bill would go out

1 for each rebilling, or we can do an adjustment sheet
2 and calculate the bill and then apply the credit to
3 the account, and the previous balance on the
4 subsequent bill would be reduced.

5 We would mail these bill prints to the
6 customer with a summary sheet on top saying the
7 attached bill print show your credit for billing
8 period here to here (indicating) and for the amount
9 of money, and we would -- I mean, that's how the
10 customer comes into the possession of bill prints.
11 Okay.

12 MR. GOLDSTEIN: Q. Now this particular document
13 what was the source of this particular document as
14 far as you know?

15 A. This would be an adjustment, and it's dated
16 March 30, 1994. The print date is up at the top of
17 the document. An even though it's for bill period
18 9-13 to 10-12 -- sorry -- it's for bill period 9-13
19 to 10-12, but it was printed on March 30, 1994, okay
20 so --

21 Q. What was the balance that's shown on that
22 particular --

1 A. Bill print only show --

2 Q. -- print?

3 A. -- show the amount of bill that's being

4 calculated, so the 78 -- \$7820.26 here is the amount

5 of the calculation from September '93 to October

6 '93. It doesn't show previous balance, late

7 charges, any of that information. It's a

8 calculation of the bill. Okay. Unlike an actual

9 bill, which will show a previous balance, and any

10 late charges, and they have the current bill, and

11 the total bill, which are different balances on an

12 actual bill that goes out the door, an adjustment

13 sheet is showing the amount of the calculation.

14 Q. Let me next show you what has been marked as

15 Exhibit 4(b), and could you describe what is shown

16 on Exhibit 4(b)?

17 A. This is a regular IBS bill from October to

18 November of 1993.

19 Q. And what is the balance that's shown on that

20 account for that current bill?

21 A. Current bill is showing 5500, but there's

22 also late payment charges, previous balance, for

1 total bill of 95 grand.

2 Q. \$95 -- 9519.11; is that --

3 A. Yes.

4 Q. Can you explain how the bill that was
5 previously sent jumped from whatever it was through
6 to 95,000?

7 A. Because this bill from October of '93 was
8 not previous. It was dated March of '94. This bill
9 in November of '93 obviously had unpaid balances,
10 you know, bills from previous months that were
11 unpaid.

12 Q. Let me show you --

13 A. That's November '93.

14 Q. Do you have that?

15 MR. MUNSON: No. Could you mind if we pause.
16 Let me just keep up what you are saying.

17 THE WITNESS: I could go over and show them.

18 MR. GOLDSTEIN: Would it be helpful if she came
19 over there --

20 THE WITNESS: I'll just come over there and talk
21 about it.

22 MR. GOLDSTEIN: -- Mr. Munson?

1 MR. MUNSON: Yes, that would be great.

2 THE WITNESS: This is the -- let's see where I'm

3 going. John, could you grab that. This is an

4 adjustment sheet for October of '93. It was

5 produced in March of '94. Okay. This is the bill

6 for November of '93. It shows current bill's 5580

7 unpaid total bill, unpaid previous balances 88 grand

8 and what's owing is 95 grand. Okay. Then we go to

9 December, then we go to December.

10 Q. That is Exhibit 4(c).

11 A. The total bill is now 95 grand. The unpaid

12 bill is now 96 grand. The unpaid amount is the

13 \$1300 in late charges.

14 Q. What is that 4(d).

15 A. That's the next bill, January, the unpaid

16 balance going up. Now it's \$103,000.

17 Q. What about 4(e)?

18 A. Here's February. The total bill you can see

19 here is 104,000. That looks like 81632.

20 Q. And 4(f)?

21 A. We are up to 1067.19

22 Q. What about 4(g)?

1 A. We are up to 1077.12. Each time you know
2 the amount that's not being paid is the late charges
3 and some unpaid balance in the past.

4 Q. Let me show you what's been marked as 4(h)
5 which's that bill?

6 A. Now here the next bill -- okay. So here's
7 April. Here's the May '94 bill. It goes down to
8 76,368.03. So the 78,795 is now the previous
9 balance, not the hundred thousand, so if I take --
10 we're still going.

11 Q. What about 4(i)?

12 A. Where is -- where's a hundred -- here's the
13 107 -- no. That's enough. Here's the 10712.76,
14 which is the total bill from April of '94. Okay. If
15 you take that, you add -- now we're to May.

16 MR. MUNSON: Now we're to May and just to tie it
17 in, you provide that the refund was in May of 1994.

18 THE WITNESS: 8562 right here. It's right here
19 8562.32.

20 MR. MUNSON: And, okay, so that this credit you
21 say on Line 81 that was applied in May 1994 bill
22 period is a cancel of late payment charges?

1 THE WITNESS: Yes, but that's not the only credit
2 that was given. If we do the math here, we have
3 17712.76. Okay. You add the current bill and the
4 current late payment charge. I subtract out the
5 856232 and I subtract out the previous balance on
6 this bill, I get a 26489 difference.

7 Let's assume the customer like they
8 were doing every month here paid the most recent
9 bill of 564975. It leaves that (indicating), the
10 difference between this bill (indicating) and this
11 bill (indicating), received a credit of 20,839.50 or
12 made a payment of 26,489.25, so one of those two
13 things, the balance went down 26489.45. If they're
14 typically paying the bill, that was an unexpected
15 credit of one shape, form or another, of 26,829.50,
16 which is the difference between this bill
17 (indicating) and this bill (indicating) , and that's
18 the fact that --

19 MR. GOLDSTEIN: Q. Pardon me. Between Exhibit
20 4(g) and 4(h).

21 A. Yes. And the credit between
22 peak-and-off-peak split that we figured up based on

1 adjustment sheets -- this is off the top of my
2 head -- it's about 17 grand, so there was another
3 \$3,800 in there for something.

4 MR. MUNSON: Late payment charges?

5 THE WITNESS: No, late payment charges are
6 accrued in a different way on our journal entry. On
7 our general ledger, and late payment charges must
8 show up a separate journal entry on the line, so any
9 late payment charge calculation shows up just like
10 it does here, this 8562, so the other \$20,800 was a
11 credit to our general ledger for something other
12 than late payment charges. I'm not saying it wasn't
13 a payment.

14 MR. MUNSON: But it's for the on/off-peak split
15 for not having the time-of-day meters?

16 THE WITNESS: Seventeen grand would equate for
17 that, not the 3800. I don't know, when I do the
18 math, where the 3800 came from. I came up with that
19 peak-and-off-peak split being about 17 grand, but
20 the credit received was 20,839.50.

21 MR. GOLDSTEIN: Q. Let me show you what's been
22 marked as Group Exhibit 4(j), which is the next

1 succeeding bill, is it not?

2 A. Yes.

3 Q. And --

4 A. There's additional late payment charges that
5 were cancelled of 18597 and on this bill --

6 Q. What's the balance on that account?

7 A. 55,088.05.

8 Q. All right.

9 A. So there was another chunk of money -- throw
10 me your calculator.

11 MR. PARISE: Shall throw it?

12 THE WITNESS: Okay. You could walk it over.
13 That would be so much better than that tiny
14 little -- okay.

15 MR. MUNSON: Again, just so I understand, you are
16 calculating still credits that are applied for
17 differential on/off-peak split versus billing all
18 on-peak with the cumulative meter; is that correct?

19 THE WITNESS: No. I'm calculating a credit for
20 \$20,800. I don't know that it's only for
21 peak-and-off peak, and we don't do adjustments to a
22 bill your complaining about being an off-peak;

1 therefore, that's what you're complaining about,
2 that's the only thing I'm going to adjust, we don't
3 work that way.

4 If a customer complains about a bill, we
5 take a look and recalculate the bill based on what
6 information we have to make that bill correct. If
7 it's a peak-and-off-peak split that's argued about,
8 it could later then come back and say, okay, it was
9 a peak-and-off-peak split, I still disagree with
10 something else or, you know, you know, I'm saying
11 it's a \$20,800 credit. Now I forgot where I was for
12 this one bill period. Let me figure out this one.

13 MR. GOLDSTEIN: Q. And then what you're doing is
14 figuring out --

15 A. The next subsequent bill --

16 Q. -- which is from June 13, '94 to July 13
17 nine four.

18 A. On the next bill on here, the balance went
19 down another -- let's assume they paid the last bill
20 the same way, minus current bill amount, 864598,
21 assuming they're paying the current bill, 17,340.80.

22 Q. Do you attribute that amount totally to the

1 demand-in-usage split?

2 A. The peak-and-off-peak.

3 Q. Peak-and-off-peak split. I'm sorry.

4 A. The speak-and-off-speak split when we
5 calculate out was about 17 grand.

6 Q. And that was already accounted for in that
7 previous --

8 A. No. No. I'm saying this bill has a \$17,000
9 credit. This bill has a \$20,800 credit, which it's
10 for -- I don't know. The peak-and-off-peak split is
11 about 17 grand when we do the math, you know, how
12 many years later?

13 JUDGE GILBERT: Seventeen thousand per month?

14 THE WITNESS: No. No. Seventeen grand total for
15 a period of when they were put on IBS on Rate 6T
16 from the June/July period up until meters were
17 installed on September 16 from -- so that was June
18 13, '93 to September 16, '93, that time period doing
19 a peak-and-off-peak split was about a 17,000
20 adjustment. That's what we calculated it to be. I
21 see a \$17,340 difference on this bill here.

22 MR. GOLDSTEIN: Q. Define what the bill is.

1 A. On this June -- on 4(i), okay, I also see,
2 however, a \$20,800 credit on 4(h), and I don't know
3 what that's for. I don't know what that's for
4 without that summary pagae that goes out to the
5 customer when we give them an adjustment that isn't
6 a cancelled rebill, so there's \$20,800 here that I
7 can't explain what the credit's for. The 17,000 I
8 can't definitely say what it's for, but that's what
9 the peak-and-off-peak split is about worth when we
10 calculate 12 years later, 13 years later, whatever.

11 Q. Now let me show you Exhibits 4(j) and 4(k).
12 Those bills were also in what amounts?

13 A. This shows the June and July bill, and 4(j)
14 that's June of '94 and July of '94. No, this is the
15 July of '94 that has the difference between this
16 (indicating) and this is the \$17,000 credit.

17 Q. Then going to 4(k)?

18 A. Okay.

19 Q. And that's the bill from July 13 to August
20 11, '94.

21 A. Till August. I'll start with this one
22 previous balance, total bill 55088.05. I'm going to

1 add in what's on the current bill. Okay. There's
2 no late payment charge credits here, and if they
3 paid the total amount due here, it's exactly
4 \$15,000, so that could be --

5 Q. Do you have any explanation?

6 A. That to me they're paying up their previous
7 balance. When we see adjustments don't come out to
8 be exactly to the penny, we see a \$15,000 credit, I
9 would expect they could produce a payment for
10 \$15,000, now that the adjustments have been settled,
11 there's still a previous balance. They make a
12 payment of 15 grand, they're getting the previous
13 balance paid down now after the adjustment. That's
14 what that tells me. It's exactly 15,000.

15 JUDGE GILBERT: Are we done with this group
16 exhibit?

17 MR. GOLDSTEIN: Yes, we are.

18 JUDGE GILBERT: Okay. That's -- let's all go
19 back from where we started from, and we are, well,
20 trying to -- try to look like a hearing room again.

21 THE WITNESS: Sorry. That's difficult with me in
22 the room. I apologize.

1 JUDGE GILBERT: No problem. Okay. Now this had
2 been Mr. Goldstein's witness, so, Mr. Goldstein, go
3 ahead.

4 MR. GOLDSTEIN: Nothing further.

5 JUDGE GILBERT: Okay. What about group
6 exhibit --

7 MR. GOLDSTEIN: I would move into evidence Com Ed
8 Group Exhibit 4(a) through (k).

9 MR. MUNSON: Were those provided by Mr. Shifrin?

10 MR. GOLDSTEIN: I believe they were. You want to
11 look at them.

12 MR. MUNSON: Recross.

13 JUDGE GILBERT: I take it there's no objection to
14 admission of the exhibits?

15 MR. MUNSON: The bills they're relevant.

16 JUDGE GILBERT: Okay. Com Ed Group Exhibit 4 is
17 admitted.

18 (Whereupon, Com Ed
19 Exhibit No. 4 was
20 received in evidence.)

21 We are back on the record.

22

1 RECROSS EXAMINATION

2 BY

3 MR. MUNSON:

4 Q. You would agree the only reason customers
5 come into possession of a bill print is if Com Ed
6 made a mistake; is that correct?

7 A. If Com Ed does an adjustment for a
8 customer.

9 Q. Which adjustments, previous usage, or
10 demand, or previous bills?

11 A. Yes.

12 Q. Now you came up -- if I can understand your
13 testimony, and I'm not sure I completely get it, the
14 \$15,000 amount you said that there Americana's
15 paying off their previous balance, correct?

16 A. No. I said I don't know why there is a
17 \$15,000 credit because most of the adjustments that
18 we do 99.99 percent of the adjustments that we do
19 does not come out to be a round thousand dollar
20 number, so I would assume, in my experience, that
21 that would have been a payment, and in normal
22 business process we have a customer who objects to a

1 bill who we're allowing this previous balance
2 to grow, and grow, and grow, and we're not taking
3 collection action on them to discount them for
4 unpaid balances, all of a sudden their thousands of
5 dollars jump downwards in their previous balance.

6 If we would do an adjustment for them, we
7 would say now this is your adjustment, the rest of
8 the previous balance is still owed by you, we would
9 at that point in time expect the customer to now
10 make payments and catch up on their previous
11 balance.

12 Q. And it's likely this customer made
13 arrangements to do just that; isn't that correct?

14 A. That's the debt department. I don't know
15 what arrangements. I don't know their normal course
16 of arrangements that they make with customers, how
17 long they would give them or not.

18 Q. If it's not, then what -- what are the
19 credits for?

20 A. I would think the credits were for previous
21 adjusted bills, and the \$15,000 was for a payment.
22 That's what I would guess it was from.

1 Q. Is it your understanding that those amounts
2 are amounts that Americana is claiming in its
3 current complaint against Com Ed?

4 A. I believe so, yes.

5 Q. Can you show me and Mr. Shifrin in
6 Mr. Shifrin's testimony which amounts in what he
7 provides could account for those credits?

8 A. His dollars I can't come up with. I know
9 that the peak-and-off-peak split was about \$17,000
10 and the calculation on that bill showed 17,389 if I
11 remember correctly.

12 Q. Four nine.

13 A. Whatever. Seventeen thousand three hundred
14 I have that on a different piece of paper. Okay. I
15 don't know what other bills were adjusted or what
16 other things were resolved or settlement made for
17 the \$20,800 and we don't have records to produce
18 bills that far showing previous balances on bills.

19 Q. You don't have -- that's not included in the
20 TTRs?

21 A. No. The terminal transaction register is
22 just when people put fingers on keys to show the

1 found, left readings when they adjusted a read enter
2 another read. Previous balances were kept
3 externally automatic to the system.

4 MR. MUNSON: I don't have anything further.

5 THE WITNESS: Okay.

6 EXAMINATION

7 BY

8 JUDGE GILBERT:

9 Q. Okay. Before you are done, I do want to ask
10 you to maybe walk through an entry or two on your
11 Exhibit 2.1.

12 A. Okay. That's the TTR.

13 Q. And I'm hoping this will be a very neutral
14 journey, which I won't trigger the need for
15 additional questions by counsel, but we'll see.

16 A. Can I take you to a very basic one that I
17 have?

18 Q. Within this document?

19 A. Yes.

20 Q. Yes. Which one?

21 A. If you go back on 7-15-93, there's two
22 7-15-93 entries.

1 MR. GOLDSTEIN: Looking at the second sheet of
2 Exhibit 2.1.

3 THE WITNESS: I have the whole TTR.

4 JUDGE GILBERT: Q. Yes, I see it.

5 A. Okay. The bottom one, 71593, it says type
6 on the second line. It says type LADY. That's
7 where they adjust the reads, now the meter he's
8 referring to or that has one of the meters that has
9 a lot of discussion in this whole situation, is the
10 AEAF meter on the right side of that second line.
11 Do you see AEAF.

12 Q. Yes.

13 A. That is the first five digits. It's the
14 kilowatthour reading, and the last five digits is
15 the demand reading with the two decimal places to
16 kilowatthour ratings 28476, then the demand reading
17 would be 052.15.

18 Q. Okay. And, so I could understand this in
19 its entirety, let's go back to the beginning of that
20 particular entry, which is the third entry from the
21 bottom of Page 2 of Exhibit 2.1 begins with the
22 date, that part I get. It then has the word "read."

1 What does that mean?

2 A. It's a read order there in the red window.

3 They're adjusting readings in the system.

4 Q. Meter readings?

5 A. Yes. They're entering read usage and

6 they're moving along to the right CUST IA US (sic) I

7 assume is customer. Yes, it's an A-type customer.

8 Q. Okay. It says a --

9 A. Terminal.

10 Q. Term?

11 A. Terminal. That's the terminal that they

12 were sitting at, the operation -- operator has

13 initials of JI, it was at the Chicago north

14 office.

15 Q. So that's the terminal of operators -- let

16 me finish -- receiving this information, not one

17 of the current terminals in the -- at the

18 premises?

19 A. No. In these terminals the actual computer

20 ID CND051.

21 Q. I got it.

22 A. And the operator who was signed into that

1 terminal had the initials JI.

2 Q. And then it says AT which I hope is just
3 at --

4 A. At.

5 Q. Chicago north, which I assume is an office?

6 A. Yes.

7 Q. And then second line 1604 would that be the
8 time-of-day?

9 A. Yes.

10 Q. Would that be 4:04 in the afternoon?

11 A. Yes.

12 MR. GOLDSTEIN: 4:06.

13 THE WITNESS: 4:04, yes.

14 JUDGE GILBERT: Q. And then you explained type
15 before. Could you do that again.

16 A. In that reading dialogue, they are doing an
17 adjustment to the readings.

18 Q. Okay.

19 A. All right.

20 Q. And then it says "data again."

21 A. They are adjusting the readings for May 13
22 of '93.

1 Q. Okay.

2 A. Okay. Applicable to May 13 of '93.

3 Q. Okay.

4 A. Then it's the reading code, the watt-hour
5 demand read for the Meter AEAF, which is just the
6 identifying meter on Exhibit 2.2, which you took
7 from me on Exhibit 2.2. We have these codes
8 associated with each meter to show which meter we
9 are talking about.

10 Do you see the AEAF meter on the top --
11 along the top.

12 Q. Yes. Okay. So I'm on Page 2 of Exhibit 2.2
13 and I see the AEAF, yes.

14 A. And this document, Exhibit 2.2, I put
15 together what meters were actually in that fitting
16 because AEAF refers to that meter fitting regardless
17 of what meter is in it.

18 Q. What's a meter fitting?

19 A. The round thing where you plug the meter in
20 so we could take a meter out, we could put a meter
21 in. It's still this round thing where we get
22 readings, and usage has a code for this one as AEAF.

1 Okay.

2 So regardless of what meter's in that
3 fitting, we know what meter followed which meter by
4 the fact that it's always sitting down on Code AEAF.
5 That's the way I was able to come up with the
6 history of what meter followed which meter on this
7 document 2.2. Okay. So AEAF for that meter, the
8 first five digit kilowatthours of 28476, the last
9 52.15 is the demand.

10 Q. Then going down to the next line is BA-BB?

11 A. That's another meter on 2.2. Exhibit 2.2
12 will show you that -- that, you know, meter at this
13 time it was Meter 737.

14 Q. So that BABB is another meter fitting I take
15 it?

16 A. Yes. That reading was -- was 14336 with a
17 demand reading of 683.00, then you'll see the "E"
18 after it and putting that "E" in is what designates
19 this as an estimate or not.

20 MR. MUNSON: And which wasn't on this particular
21 bill?

22 THE WITNESS: That was an IBS bill. I'm reading

1 the CIS transcript, so the biller who billed this in
2 CIS in July of '93 did put an "E" on that reading.

3 I agree with you that in July of --

4 MR. GOLDSTEIN: '93.

5 THE WITNESS: Thank you. '93.

6 MR. GOLDSTEIN: Getting late.

7 THE WITNESS: But this is adjusting the date
8 for the May 13, '93 reading. I'm adjusting the
9 demand, so then the same holds true with the BCBD
10 meter.

11 RECROSS EXAMINATION

12 BY

13 MR. MUNSON:

14 Q. You are adjusting the demand?

15 A. I'll explain it when I'm adjusting the
16 found, because it's about the bill, it's to the
17 left, and when we get through the next entry, then
18 I'll explain that. I'll reference that. I promise
19 I'll go back and reference that.

20 Okay. So then you go to the 7-15-93 read
21 order just above that and the same thing is true and
22 a type customer at the terminal by operator JI at

1 Chicago north at 1606 in the afternoon.

2 Q. You lost me.

3 A. I'll --

4 JUDGE GILBERT: On Page 2 of the Exhibit 2.1

5 just move up one entry.

6 MR. GOLDSTEIN: From this entry here to this

7 entry here (indicating).

8 JUDGE GILBERT: Go to the fourth entry from the

9 bottom.

10 MR. MUNSON: Okay. Got it.

11 THE WITNESS: So the type of read is a special --

12 a special reading input, so that means I am making

13 these key strokes to bill this customer up. All

14 right.

15 MR. MUNSON: Q. Bill this customer up?

16 A. Bill this customer up to the date of July

17 14, '93.

18 Q. Okay.

19 A. All right. So in CIS the bill period from

20 that first entry the date was 5-13-93 and they bill

21 it through to July 14, '93 in CIS. They bill it two

22 month periods in CIS.

1 Q. Billed? Okay.

2 A. So a bill.

3 Q. Which two-month period?

4 A. 5-13-93 to 7-14-93. They were subsequently
5 cancelled and the customer rebilled in IBS, but I'm
6 showing you how I'm reading this, okay -- reading
7 this, okay, so we go down to -- then what she did is
8 she -- in the first entry she adjusted the demand on
9 three of the meters, and in that second entry she
10 then went in and she billed those meters forward,
11 and if you look at the entry for AEAF, okay, the
12 reading was 30869, so the first entry the reading
13 for AEAF was 28476.

14 The second -- the special read was 30869.
15 The demand went from 52.05 up to 54.47, okay, and
16 that's where I get the readings to show from one
17 point to another, and the key to this is that when
18 you enter that ADJ reading, that is because the
19 meter reader reported to us that they did not find
20 that demand reading at the same reading that the
21 reader left it at at that last month, somebody had
22 punched that demand in-between the time this meter

1 reader was standing in front of it and the time it
2 was last recorded in our billing system.

3 So the fact the meter reader noticed the
4 demand was different, he wrote the reading down and
5 that became our found for Meter AE, the found was
6 52.15, all right, then he punched the meter and the
7 reading went up to 54.47, so we adjusted the last
8 billed read because the meter reader's telling us
9 what we billed it to before it had advanced. We
10 adjusted the reading to 52.15 and we billed it up to
11 5.47.

12 A double or triple punch on the meter
13 cannot occur unless two things are factual: One,
14 that meter demand reading was advanced at some
15 period in time, not by this meter reader who's
16 standing in front of this meter, so it had -- it was
17 advanced and that demand memory cleared out of the
18 machine at some point in time between the time the
19 meter reader was there and the time the meter reader
20 is standing there. That has to occur for double or
21 triple punch, the second has to be true. The meter
22 reader has not realized that that demand reading is

1 different.

2 Our meter reader did notice, and I know
3 our meter reader noticed, because he reported it and
4 we adjusted the found, and then we billed it to the
5 left so that it would be one demand registration on
6 that meter. He stood there. He punched it. It
7 advanced. He wrote down the left. It went from
8 found to left when he stood there and that punching
9 activating that demand register is what cleared the
10 demand out of the meter and recorded it on the dials
11 now that there's no more memory in that machine in
12 that meter.

13 JUDGE GILBERT: Can anyone punch a meter other
14 than a meter reader?

15 THE WITNESS: They -- they would have to break
16 off the plastic seal and punch it. Yes, they can.
17 That's why it's important, and the meter readers
18 tells us when that found read that they see right
19 there doesn't match what he left it at last month,
20 he can't punch that thing twice, and when he tells
21 us what he found it at, and he punches it, and it
22 advances, that is the highest demand in the memory

1 of that machine since the last time it was punched.

2 It was punched a month ago. It was my highest

3 demand in months.

4 If it were punched a week ago, it's the

5 highest demand in a week, but the fact is he can't

6 punch it again and get any response or advance off

7 that reading until another 30-minute interval passes

8 and another demand is entered into the memory of the

9 meter, so the fact the meter reader reported a found

10 left difference stood there, read it, punched it,

11 read it, that negates the possibilities of us having

12 billed with a double or triple punch with a multiple

13 activation of the cum (sic) demand, which is what is

14 really is known as double punch is a Com Ed slang

15 term.

16 MR. MUNSON: Q. For this period that you are

17 talking about?

18 A. Yes. Then it also happen on the TTR to

19 have another found left difference recorded on

20 August 27 of '93, and I have the actual demand

21 recorded on 9-16-93, so that means the July, August,

22 and September demands are factual. They're found

1 left reporting difference and they are all over 500
2 kw.

3 Q. August, September --

4 A. You can get from this TTR the found and left
5 differences of what was entered into the terminal,
6 for what that meter reader reporting and the fact
7 the meter reader was reporting found left
8 difference tell me there was no double punch because
9 he noticed that reading was different than last
10 month.

11 Q. If a meter reader doesn't report that --

12 A. That is, when if a meter reader doesn't
13 report a found left difference and the meter
14 actually had been activated, sometime since the last
15 bill period and the day the meter reader's standing
16 there, when both of those things happen, you can
17 wind up with a double punch, okay, a multiple
18 deactivation of the CUM (sic) register. It didn't
19 happen here.

20 Q. But the TTRs don't tell the whole story of
21 this particular customer, just what people enter
22 into the system, correct?

1 A. That's correct, which happens to be the
2 readings for July, August, and September in '93,
3 however --

4 Q. But in December 28 -- or sorry -- yes,
5 December 28th of 1992 you have -- do you have that?
6 That's not part of your testimony?

7 A. Yes.

8 Q. Where is that listed?

9 A. NC, (sic) electrical volt, and NECO ASAP.

10 Q. It's now your understanding there was a
11 major fire at the facility and there's been
12 testimony as to that effect; is that correct?

13 A. Yes.

14 Q. So --

15 A. That doesn't negate the fact the meter may
16 have kept running.

17 Q. That's right, but the fire wasn't reported
18 on the TTR, yet, it was the major occurrence for the
19 this facility.

20 A. Yes.

21 Q. And it didn't occur at the time of the fire.
22 It occurred on a Monday after when the person went

1 into the office, correct?

2 A. Monday after --

3 Q. 28th of 1992 is a Monday.

4 A. You are right. The terminal entries record
5 key strokes into the terminal, but the account -- it
6 doesn't record everything about the account, but if
7 a fire had damaged -- well, now what Woody Sherer
8 (sic) will testify whether that meter was damaged or
9 not.

10 Q. That's correct?

11 A. As long as I'm still getting advanced
12 readings, advanced readings on a meter, and a meter
13 reader is going in there and not reporting an
14 irregular condition, because if a meter reader went
15 in there and found a burned-up meter or could not
16 advance the demand registration on the meter, he
17 would report an irregular condition and that would
18 show up on the TTR. That didn't. I got perfectly
19 good July, August, and September readings from that
20 reader.

21 Q. Now stop for a second. One bill was
22 estimated, correct?

1 A. The June bill.

2 Q. The June bill was estimated?

3 A. No. The June bill in CIS was billed from

4 May to July. On two of the meters, on the BA and BC

5 meters we estimated the demand.

6 Q. Yes.

7 A. We did not estimate the demand for the AE

8 meter in going from June to July, just because of a

9 bill's estimated doesn't mean every meter on a bill

10 is estimated.

11 Q. That's correct, but you -- again, you

12 didn't provide that on the bill and that was a

13 mistake.

14 A. You were showing -- you were showing --

15 Q. Is that correct?

16 A. -- the IBS bills.

17 Q. I don't know. You didn't provide it on any

18 bill that estimated?

19 A. We provide on CIS bills from May to July.

20 Should we have provided it again on the June bill in

21 BIS, yes.

22 Q. And you didn't do that?

1 A. I agree with that.

2 Q. And you --

3 A. Not that that doesn't mean --

4 Q. Hold on.

5 A. -- readings were wrong. It means it wasn't

6 marked an estimate.

7 MR. MUNSON: I think we have exhausted this.

8 JUDGE GILBERT: Good. All right. Thank you,

9 Ms. Miller.

10 THE WITNESS: Thanks.

11 MR. GOLDSTEIN: Is the witness excused, Judge?

12 JUDGE GILBERT: Yes.

13 MR. GOLDSTEIN: 20 after 5.

14 JUDGE GILBERT: Can we do Mr. Sherer by

15 6 o'clock? Can we complete him by 6 o'clock?

16 MR. MUNSON: Hope so.

17 THE WITNESS: Only took me half hour.

18 JUDGE GILBERT: Per question.

19 THE WITNESS: That was a joke.

20 JUDGE GILBERT: You want to go with Mr. Sherer

21 tomorrow, that's fine with me.

22 MR. MUNSON: Either way, Judge, your preference.

1 JUDGE GILBERT: It's your call.

2 MR. GOLDSTEIN: I sort of doubt we're going to

3 finish by 6.

4 JUDGE GILBERT: Let's go off the record.

5 (Off the record.)

6 Back on. All right. We're going to end

7 today. Mr. Sherer is will be the first witness

8 tomorrow and we'll start a 10 o'clock. We'll

9 continue until then.

10 (Whereupon, the above

11 matter was adjourned, to

12 be continued to November

13 15, 2006 at 10 o'clock

14 a.m.)

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